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THE AMERICAN ENERGY INITIATIVE, PART 11: THE PIPELINE INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF 2011

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 15 & 21, 2011

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C O N T E N T S

JULY 15, 2011

WITNESSES

SUBMITTED MATERIAL

JULY 21, 2011

WITNESSES

THE AMERICAN ENERGY INITIATIVE, PART 11: THE PIPELINE INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF 2011

FRIDAY, JULY 15, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:37 a.m., in room 2322, Rayburn House Office Building, Hon. John Sullivan (vice chairman of the subcommittee) presiding.

Present: Representatives Sullivan, Shimkus, Terry, Burgess, Bilbray, Olson, McKinley, Gardner, Griffith, Upton (ex officio), Rush, Inslee, Castor, Green, Gonzalez, and Waxman (ex officio).

Staff present: Gary Andres, Staff Director; Charlotte Baker, Press Secretary; Michael Beckerman, Deputy Staff Director; Maryam Brown, Chief Counsel, Energy and Power; Andy Duberstein, Special Assistant to Chairman Upton; Garrett Golding, Legislative Analyst, Energy; Cory Hicks, Policy Coordinator, Energy and Power; Katie Novaria, Legislative Clerk; Jeff Baran, Minority Senior Counsel; and Caitlin Haberman, Minority Policy Analyst.

OPENING STATEMENT OF HON. JOHN SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SULLIVAN. I want to thank everyone for being here.

Today marks the 11th day in our American Energy Initiative hearing. While these hearings have allowed us to examine a multitude of issues regarding energy production, regulation, and consumption, today we will focus on what can be done to improve the safety and secure delivery of oil and natural gas via pipeline.

Several tragic pipeline accidents have occurred over the past year, which demonstrates the need to reauthorize and enhance current safety laws. Despite this committee room frequently being the site of many tense debates and discussions, pipeline safety is an issue I hope we can all work together on to produce meaningful and effective legislation to ensure the safety of our oil and gas pipeline infrastructure for the future while protecting the American people and our environment.

Over the past several years, we have been able to pass bipartisan bills on pipeline safety, sometimes under suspension on the floor.

This is because our pipeline infrastructure touches every congressional district, and accidents can happen anywhere, anytime.

Before us at the witness table, we have a Democrat from California and a Republican from Montana. Both have dealt with major accidents recently, and both understand Congress must act to strengthen current pipeline laws.

It is critically important that our pipeline infrastructure is both reliable and durable. And to this end, the discussion draft under examination today makes many important modifications to existing law that will promote greater pipeline safety standards.

[The discussion draft follows:]

[DISCUSSION DRAFT]

JULY 8, 2011

112TH CONGRESS
1ST SESSION

H. R. _____

To amend title 49, United States Code, to provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 49, United States Code, to provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pipeline Infrastructure and Community Protection Act of 2011".

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CIVIL PENALTIES.

(a) PENALTY CONSIDERATIONS; MAJOR CONSEQUENCE VIOLATIONS.—Section 60122 is amended—

(1) by striking "the ability to pay," in subsection (b)(1)(B);

(2) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(3) by inserting after subsection (b) the following:

"(c) PENALTIES FOR MAJOR CONSEQUENCE VIOLATIONS.—

"(1) IN GENERAL.—A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has knowingly and willfully committed a major consequence violation of section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than $250,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of major consequence violations is $2,500,000.

"(2) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a major consequence violation under this subsection, the Secretary shall consider the factors prescribed in subsection (b).

"(3) MAJOR CONSEQUENCE VIOLATION DEFINED.—In this subsection, the term 'major consequence violation' means a violation that contributed to a pipeline incident resulting in—

"(A) 1 or more deaths;

"(B) 1 or more injuries or illnesses requiring in-patient hospitalization; or

"(C) environmental harm exceeding $250,000 in estimated damages to the environment including property loss, other than the value of natural gas or hazardous liquid lost and damage to pipeline equipment.".

(b) PENALTY FOR INTENTIONAL OBSTRUCTION OF INSPECTIONS AND INVESTIGATIONS.—Section 60118(c) is amended by adding at the end the following: "The Secretary may impose a civil penalty under section 60122 on a person who intentionally obstructs or prevents the Secretary from carrying out inspections or investigations under this chapter.".

(c) ADMINISTRATIVE PENALTY CAPS INAPPLICABLE.—Section 60120(a)(1) is amended by adding at the end the following: "The maximum amount of civil penalties for administrative enforcement actions under section 60122 shall not apply to enforcement actions under this section.".

(d) JUDICIAL REVIEW OF ADMINISTRATIVE ENFORCEMENT ORDERS.—Section 60119(a) is amended—

(1) in the subsection heading by striking "AND WAIVER ORDERS" and inserting ", ORDERS, AND OTHER FINAL AGENCY ACTIONS"; and

(2) by striking "about an application for a waiver under section 60118(c) or (d) of" and inserting "under".

SEC. 3. PIPELINE DAMAGE PREVENTION.

(a) MINIMUM STANDARDS FOR STATE ONE-CALL NOTIFICATION PROGRAMS.—Section 6103(a) is amended to read as follows:

"(a) MINIMUM STANDARDS.—

"(1) IN GENERAL.—In order to qualify for a grant under section 6106, a State one-call notification program shall, at a minimum, provide for—

"(A) appropriate participation by all underground facility operators, including all government operators;

"(B) appropriate participation by all excavators, including all government and contract excavators; and

"(C) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.

"(2) EXEMPTIONS PROHIBITED.—A State one-call notification program may not exempt mechanized excavation, municipalities, State agencies, or their contractors from its one-call notification system requirements.".

(b) STATE DAMAGE PREVENTION PROGRAMS.—Section 60134(a) is amended—

(1) by striking "and" after the semicolon in paragraph (1);

(2) by striking "(b)." in paragraph (2)(B) and inserting "(b); and"; and

(3) by adding at the end the following:

"(3) does not provide any exemptions to mechanized excavation, municipalities, State agencies, or their contractors from its one-call notification system requirements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

SEC. 4. GAS AND HAZARDOUS LIQUID GATHERING LINES.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall complete a review of all exemptions for gas and hazardous liquid gathering lines located onshore and offshore in the United States, including within the inlets of the Gulf of Mexico. Based on this review the Secretary shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure and Committee on Energy and Commerce containing the Secretary's recommendations with respect to—

(1) the sufficiency of existing regulations and exemptions to ensure pipeline safety;

(2) the economical and technical practicability of applying existing regulations on currently unregulated gathering lines; and

(3) the modification or revocation of existing exemptions.

SEC. 5. AUTOMATIC AND REMOTE-CONTROLLED SHUT-OFF VALVES.

Section 60102 is amended by adding at the end the following:

"(n) AUTOMATIC AND REMOTE-CONTROLLED SHUT-OFF VALVES.—Not later than 2 years after the date of enactment of the Pipeline Infrastructure and Community

Protection Act of 2011, the Secretary shall by regulation, after notice and an opportunity for a hearing, require the use of automatic or remote-controlled shut-off valves, or equivalent technology, where economically, technically, and operationally feasible on transmission pipelines constructed or entirely replaced after the date on which the Secretary issues a final rule.".

SEC. 6. EXCESS FLOW VALVES.

Section 60109(e)(3) is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following:

"(B) DISTRIBUTION BRANCH SERVICES, MULTIFAMILY FACILITIES, AND SMALL COMMERCIAL FACILITIES.—Not later than 2 years after the date of enactment of the Pipeline Infrastructure and Community Protection Act of 2011, the Secretary shall by regulation, after notice and an opportunity for a hearing, require the use of excess flow valves, or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced distribution branch services, multifamily facilities, and small commercial facilities.".

SEC. 7. INTEGRITY MANAGEMENT.

(a) EVALUATION.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall evaluate whether integrity management system requirements, or elements thereof, should be expanded beyond high consequence areas (as described in section 60109(a) of title 49, United States Code) for natural gas and hazardous liquid transmission lines.

(b) RECOMMENDATIONS.—Based on the evaluation conducted under subsection (a), the Secretary shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure and Committee on Energy and Commerce containing the Secretary's recommendations concerning expansion of integrity management system requirements beyond high consequence areas.

(c) FACTORS.—The evaluation conducted under subsection (a), and the recommendations made under subsection (b), shall be based on an examination of the following factors:

(1) The continuing priority to reduce risks in currently defined high consequence areas.

(2) A comparison of the relative benefits of expanding integrity management principles, or elements thereof, in a manner that emphasizes reduc-

ing risks for an increasing number of people living or working in close proximity to pipelines, versus an emphasis on expanding the number of pipeline miles covered absent such a risk evaluation.

(3) The need to undertake integrity management assessments and repairs in a manner which is achievable and sustainable, and which does not disrupt pipeline service.

(d) CLASS LOCATION REGULATION REDUNDANCY.—Not later than 2 years after the date of enactment of this Act, the Secretary shall prescribe regulations, after notice and opportunity for hearing, that eliminate class location regulations for gas transmission pipeline facilities that are regulated under the integrity management program (as defined in section 60109(e)(2) of title 49, United States Code).

(e) DATA REPORTING.—The Secretary shall collect any relevant data necessary to complete the evaluation required by subsection (a) and the recommendations required by subsection (b), and may collect additional data pursuant to regulations promulgated under subsection (c) as necessary.

(f) TECHNICAL CORRECTION.—Section 60109(e)(3)(B) is amended to read as follows:

"(B) Subject to paragraph (5), periodic reassessments of the facility, at a minimum of once every 7 calendar years (not to exceed 90 months), using methods described in subparagraph (A).".

SEC. 8. PUBLIC EDUCATION AND AWARENESS.

(a) IN GENERAL.—Chapter 601 is amended by adding at the end the following:

"§ 60138. Public education and awareness

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of the Pipeline Infrastructure and Community Protection Act of 2011, the Secretary shall—

"(1) maintain a monthly updated summary of all completed and final natural gas and hazardous liquid pipeline inspections conducted by or reported to the Pipeline and Hazardous Materials Safety Administration that includes—

"(A) identification of the operator inspected;

"(B) the type of inspection;

"(C) the results of the inspection, including any deficiencies identified; and

"(D) any corrective actions required to be taken by the operator to remediate such deficiencies; and

"(2) excluding any proprietary or security-sensitive information, as part of the National Pipeline Mapping System maintain a map of all currently designated high consequence areas in which pipelines are required to meet integrity management safety regulations, and update the map annually.

"(b) PUBLIC AVAILABILITY.—The requirements of subsection (a) shall be satisfied if the information required to be made public is made available on the Pipeline and Hazardous Materials Safety Administration's public Web site.

"(c) RELATIONSHIP TO FOIA.—Nothing in this section shall be construed to require disclosure of information or records that are exempt from disclosure under section 552 of title 5.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60137 the following:

"60138. Public education and awareness.".

SEC. 9. CAST IRON GAS PIPELINES.

(a) SURVEY UPDATE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall conduct a follow-on survey to the survey conducted under section 60108(d) of title 49, United States Code, to determine—

(1) the extent to which each operator has adopted a plan for the safe management and replacement of cast iron pipelines;

(2) the elements of the plan, including the anticipated rate of replacement; and

(3) the progress that has been made.

(b) SURVEY FREQUENCY.—Section 60108(d) is amended by adding at the end the following new paragraph:

"(4) The Secretary shall conduct a follow-up survey to measure progress of plan implementation biannually.".

SEC. 10. LEAK DETECTION.

(a) LEAK DETECTION STUDY UPDATE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure and Committee on Energy and Commerce an updated report on leak detection systems utilized by operators of hazardous liquid pipelines and transportation-related flow lines. The report shall include an analysis of the technical limitations of current leak detection systems, including the systems' ability to detect ruptures and small leaks that are ongoing or inter-

mittent, and what can be done to foster development of better technologies.

(b) LEAK DETECTION STANDARDS.—Not later than 2 years after completion of the report, the Secretary shall, based on the study in subsection (a), prescribe regulations, after notice and an opportunity for a hearing, requiring an operator of a hazardous liquid pipeline to use leak detection technologies, particularly in high consequence areas.

SEC. 11. INCIDENT NOTIFICATION.

(a) REVIEW OF PROCEDURES.—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall review procedures for the National Response Center to provide thorough and coordinated notification to all relevant State and local emergency response officials and revise such procedures as appropriate.

(b) TELEPHONIC NOTICE OF CERTAIN INCIDENTS.—

(1) IN GENERAL.—Chapter 601, as amended by this Act, is further amended by adding at the end the following:

"§ 60139. Telephonic notice of certain incidents

"(a) IN GENERAL.—An owner or operator of a pipeline facility shall provide immediate telephonic notice of—

"(1) a release of hazardous liquid or another substance regulated under this chapter, resulting in an event for which notice is required under this chapter; and

"(2) a release of gas resulting in an incident, as defined in section 191.3 of title 49, Code of Federal Regulations.

"(b) IMMEDIATE TELEPHONIC NOTICE DEFINED.—In subsection (a), the term 'immediate telephonic notice' means telephonic notice, as described in section 191.5 of such title, to the National Response Center at the earliest practicable moment following discovery of a release of gas or hazardous liquid and not later than one hour following the time of such discovery.

"(c) ESTIMATES OF RELEASE VOLUMES.—When providing immediate telephonic notice under subsection (a), the owner or operator of a pipeline facility shall estimate the general volume of a release using ranges such as 'small,' 'medium,' 'large,' and 'very large,' with the volume of such ranges, but shall not be required to provide a numerical estimate of the size of the release. The owner or operator shall be allowed to revise an estimate to provide more specific information, including, but not limited to, a numerical estimate of the size of the release.

"(d) REFERENCES.—Any reference to a regulation in this section means the regulation as in effect on the date of enactment of this section.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60138 the following:

"60139. Telephonic notice of certain incidents.".

(c) STANDARDS.—Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation shall prescribe regulations, after notice and an opportunity for comment, defining the meaning of the terms "discovery", "small", "medium", "large", and "very large" as used in section 60139(c) of title 49, United States Code, as added by subsection (b) of this section.

SEC. 12. TRANSPORTATION-RELATED ONSHORE FACILITY RESPONSE PLAN COMPLIANCE.

(a) IN GENERAL.—Subparagraphs (A), (B), and (C) of section 311(m)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1321(m)(2)) are amended to read as follows:

"(A) RECORDKEEPING.—Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the department in which the Coast Guard is operating shall require the owner or operator of a facility to

which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator, the Secretary of Transportation, or Secretary of the department in which the Coast Guard is operating, as the case may be, may require to carry out the objectives of this section.

"(B) ENTRY AND INSPECTION.—Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator, the Secretary of Transportation, or Secretary of the department in which the Coast Guard is operating, upon presentation of appropriate credentials, may—

"(i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and

"(ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

"(C) ARRESTS AND EXECUTION OF WARRANTS.—Anyone authorized by the Administrator, the Secretary of Transportation, or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section with respect to any facility may—

"(i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and

"(ii) execute any warrant or process issued by an officer or court of competent jurisdiction.".

(b) CONFORMING AMENDMENT.—Section 311(b)(6)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(6)(A)) is amended by striking "operating or" and inserting "operating, the Secretary of Transportation, or".

SEC. 13. PIPELINE INFRASTRUCTURE DATA COLLECTION.

(a) IN GENERAL.—Section 60132(a) is amended by adding at the end the following:

"(4) Any other geospatial or technical data, including design and material specifications of currently regulated pipelines, that the Secretary determines is necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested.".

(b) DISCLOSURE LIMITED TO FOIA REQUIREMENTS.—Section 60132 is amended by adding at the end the following:

"(d) PUBLIC DISCLOSURE LIMITED.—The Secretary may not disclose information collected pursuant to subsection (a) except to the extent permitted by section 552 of title 5.".

SEC. 14. INTERNATIONAL COOPERATION AND CONSULTATION.

Section 60117 is amended by adding at the end the following:

"(o) INTERNATIONAL COOPERATION AND CONSULTATION.—

"(1) INFORMATION EXCHANGE AND TECHNICAL ASSISTANCE.—If the Secretary determines that it would benefit the United States, subject to guidance from the Secretary of State, the Secretary may en-

gage in activities supporting cooperative international efforts to share information about the risks to the public and the environment from pipelines and means of protecting against those risks. Such cooperation may include the exchange of information with domestic and appropriate international organizations to facilitate efforts to develop and improve safety standards and requirements for pipeline transportation in or affecting interstate or foreign commerce.

"(2) CONSULTATION.—To the extent practicable, subject to guidance from the Secretary of State, the Secretary may consult with interested authorities in Canada, Mexico, and other interested authorities, as needed, to ensure that the respective pipeline safety standards and requirements prescribed by the Secretary and those prescribed by such authorities are consistent with the safe and reliable operation of cross-border pipelines.

"(3) DIFFERENCES IN INTERNATIONAL STANDARDS AND REQUIREMENTS.—Nothing in this section requires that a standard or requirement prescribed by the Secretary under this chapter be identical to a standard or requirement adopted by a foreign or international authority.".

SEC. 15. TRANSPORTATION-RELATED OIL FLOW LINES.

Section 60102, as amended by section 5, is further amended by adding at the end the following:

"(o) TRANSPORTATION-RELATED OIL FLOW LINES.—

"(1) DATA COLLECTION.—The Secretary may collect geospatial or technical data on transportation-related oil flow lines, including unregulated transportation-related oil flow lines.

"(2) TRANSPORTATION-RELATED OIL FLOW LINE DEFINED.—In this subsection, the term 'transportation-related oil flow line' means a pipeline transporting oil off of the grounds of the well where it originated across areas not owned by the producer, regardless of the extent to which the oil has been processed, if at all.

"(3) LIMITATION.—Nothing in this subsection authorizes the Secretary to prescribe standards for the movement of oil through production, refining, or manufacturing facilities, or through oil production flow lines located on the grounds of wells.".

SEC. 16. ALASKA PROJECT COORDINATION.

(a) IN GENERAL.—Chapter 601, as amended by this Act, is further amended by adding at the end the following:

"§ 60140. Alaska project coordination

"The Secretary may provide technical assistance to the State of Alaska for the purpose of achieving coordinated and effective oversight of the construction and operation of new and prospective pipeline systems in Alaska. The assistance may include—

"(1) conducting coordinated inspections of pipeline systems subject to the respective authorities of the Department of Transportation and the State of Alaska;

"(2) consulting on the development and implementation of programs designed to manage the integrity risks associated with operating pipeline systems in the unique conditions of Alaska;

"(3) training inspection and enforcement personnel and consulting on the development and implementation of inspection protocols and training programs; and

"(4) entering into cooperative agreements, grants, or other transactions with the State of Alaska, the Joint Pipeline Office, other Federal agencies, and other public and private agencies to carry out the objectives of this section.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60139 the following:

"60140. Alaska project coordination.".

SEC. 17. COST RECOVERY FOR DESIGN REVIEWS.

(a) Section 60117(n) is amended to read as follows:

"(n) COST RECOVERY FOR DESIGN REVIEWS.—

"(1) IN GENERAL.—

"(A) REVIEW COSTS.—For any project described in subparagraph (B), if the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a new gas or hazardous liquid pipeline or liquefied natural gas pipeline facility, including construction inspections and oversight, the Secretary may require the person or entity proposing the project to pay the costs incurred by the Secretary relating to such reviews. If the Secretary exercises the cost recovery authority described in this section, the Secretary shall prescribe a fee structure and assessment methodology that is based on the costs of providing these reviews and shall prescribe procedures to collect fees under this section. The Secretary shall not collect design safety review fees under this chapter or section 60301.

"(B) PROJECTS TO WHICH APPLICABLE.—Subparagraph (A) applies to any project that—

"(i) has design and construction costs totaling at least $4,000,000,000, as adjusted for inflation; or

"(ii) uses new or novel technologies or design.

"(2) NOTIFICATION.—For any new pipeline construction project in which the Secretary will conduct design reviews, the person or entity proposing the project shall notify the Secretary and provide the design specifications, construction plans and procedures, and related materials at least 120 days prior to the commencement of construction. Within 60 days of receiving such design specifications, construction plans and procedures, the Secretary shall provide written comments, feedback, and guidance on such project.

"(3) DEPOSIT AND USE.—There is established a Pipeline Safety Design Review Fund in the Treasury of the United States. The Secretary shall deposit funds paid under this subsection into the Fund. Funds deposited under this subsection are authorized to be appropriated for the purposes set forth in this chapter. Fees authorized under this subsection

shall be available for obligation only to the extent and in the amount provided in advance in appropriations Acts.".

(b) GUIDANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue guidance to clarify the meaning of the term "new or novel technologies or design" as used in section 60117(n) of title 49, United States Code, as amended by subsection (a) of this section.

SEC. 18. SPECIAL PERMITS.

Section 60118(c)(1) is amended to read as follows:

"(1) ISSUANCE OF WAIVERS.—

"(A) IN GENERAL.—On application of an owner or operator of a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter with respect to the facility on terms the Secretary considers appropriate, if the Secretary determines that the waiver is not inconsistent with pipeline safety.

"(B) CONSIDERATIONS.—In determining whether to grant a waiver, the Secretary shall consider—

"(i) the applicant's compliance history; and

"(ii) the applicant's accident history.

"(C) EFFECTIVE PERIOD.—A waiver of one or more pipeline operating requirements shall be reviewed by the Secretary 5 years after its effective date. In reviewing a waiver, the Secretary shall consider any change in ownership or control of the pipeline, any change in the conditions around the pipeline, and other factors as appropriate. The Secretary may modify, suspend, or revoke a waiver after such review in accordance with subparagraph (E).

"(D) PUBLIC NOTICE AND HEARING.—The Secretary may act on a waiver under this subsection only after public notice and an opportunity for a hearing, which may consist of publication of notice in the Federal Register that an application for a waiver has been filed and providing the public with the opportunity to review and comment on the application. If a waiver is granted, the Secretary shall state in the order and associated analysis the reasons for granting it.

"(E) NONCOMPLIANCE AND MODIFICATION, SUSPENSION, OR REVOCATION.—After notice to a holder of a waiver and opportunity to

show cause, the Secretary may modify, suspend, or revoke a waiver issued under this subsection for failure to comply with its terms or conditions, intervening changes in Federal law, a material change in circumstances affecting safety, including erroneous information in the application, or any other reason. If necessary to avoid a significant risk of harm to persons, property, or the environment, the Secretary may waive the show cause procedure and make the action immediately effective.".

SEC. 19. BIOFUEL PIPELINES.

Section 60101(a)(4) is amended—

(1) by striking "and" after the semicolon in subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

"(B) non-petroleum fuels, including biofuels, that are flammable, toxic, or corrosive or would be harmful to the environment if released in significant quantities; and".

SEC. 20. CARBON DIOXIDE PIPELINES.

Section 60102(i) is amended to read as follows:

"(i) PIPELINES TRANSPORTING CARBON DIOXIDE.—The Secretary may, after public notice and opportunity for a hearing, prescribe minimum safety standards to regulate as a hazardous liquid the transportation of carbon dioxide by pipeline in either a liquid or gaseous state.".

SEC. 21. STUDY OF THE TRANSPORTATION OF DILUTED BITUMEN.

Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall complete a comprehensive review of hazardous liquid pipeline regulations to determine whether these regulations are sufficient to regulate pipelines used for the transportation of diluted bitumen. In conducting this review, the Secretary shall conduct an analysis of whether any increase in risk of release exists for pipelines transporting diluted bitumen. The Secretary shall report the results of this review to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Transportation and Infrastructure and Committee on Energy and Commerce.

SEC. 22. STUDY OF NON-PETROLEUM HAZARDOUS LIQUIDS TRANSPORTED BY PIPELINE.

The Secretary of Transportation may conduct an analysis of the transportation of non-petroleum hazardous liquids by pipeline for the purpose of identifying the extent

to which pipelines are currently being used to transport non-petroleum hazardous liquids, such as chlorine, from chemical production facilities across land areas not owned by the producer that are accessible to the public. The analysis should identify the extent to which the safety of the lines is unregulated by the States and evaluate whether the transportation of such chemicals by pipeline across areas accessible to the public would present significant risks to public safety, property, or the environment in the absence of regulation. The results of the analysis shall be made available to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure and Committee on Energy and Commerce.

SEC. 23. CLARIFICATIONS.

(a) AMENDMENT OF PROCEDURES CLARIFICATION.—Section 60108(a)(1) is amended by striking "an intrastate" and inserting "a".

(b) OWNER AND OPERATOR CLARIFICATION.—Section 60102(a)(2)(A) is amended by striking "owners and operators" and inserting "any or all of the owners or operators".

SEC. 24. ADDITIONAL RESOURCES.

(a) IN GENERAL.—To the extent funds are appropriated, the Secretary of Transportation shall increase the

personnel of the Pipeline and Hazardous Materials Safety Administration by a total of 39 full-time employees to carry out the pipeline safety program and the administration of that program, of which—

(1) 9 employees shall be added in fiscal year 2011;

(2) 10 employees shall be added in fiscal year 2012;

(3) 10 employees shall be added in fiscal year 2013; and

(4) 10 employees shall be added in fiscal year 2014.

(b) FUNCTIONS.—In increasing the number of employees under subsection (a), the Secretary shall hire employees—

(1) to conduct data collection, analysis, and reporting;

(2) to develop, implement, and update information technology;

(3) to conduct inspections of pipeline facilities to determine compliance with applicable regulations and standards;

(4) to provide administrative, legal, and other support for pipeline enforcement activities; and

(5) to support the overall pipeline safety mission of the Pipeline and Hazardous Materials Safety Administration, including training of pipeline enforcement personnel.

SEC. 25. MAINTENANCE OF EFFORT.

Section 60107(b) is amended to read as follows:

"(b) PAYMENTS.—After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent for gas and hazardous liquid safety programs for fiscal years 2004 through 2006, except when the Secretary waives the requirements of this subsection. The Secretary shall grant such a waiver if a State can demonstrate an inability to maintain or increase the required funding share of its pipeline safety program at or above the level required by this subsection due to economic hardship in that State.".

SEC. 26. ADMINISTRATIVE ENFORCEMENT PROCESS.

(a) ISSUANCE OF REGULATIONS.—

(1) IN GENERAL.—Not later than two years after the date of enactment of this Act, the Secretary shall prescribe regulations—

(A) requiring hearings under sections 60112, 60117, 60118, and 60122 to be convened before a presiding official;

(B) providing the opportunity for any person requesting a hearing under section 60112, 60117, 60118, or 60122 to arrange for a transcript of that hearing, at the expense of the requesting person;

(C) ensuring an order issued under 60112(c) provides an opportunity for a hearing within 20 calendar days after the order is issued, unless good cause is shown; and

(D) implementing a separation of functions between personnel involved with investigative and prosecutorial activities and advising the Secretary on findings and determinations.

(2) PRESIDING OFFICIAL.—The regulations prescribed under this subsection shall—

(A) define the term "presiding official" to mean the person who conducts any hearing relating to civil penalty assessments, compliance

orders, safety orders, or corrective action orders; and

(B) require that the presiding official must be an attorney on the staff of the Deputy Chief Counsel that is not engaged in investigative or prosecutorial functions, including the preparation of notices of probable violations, orders relating to civil penalty assessments, compliance orders, or corrective action orders.

(b) STANDARDS OF JUDICIAL REVIEW.—Section 60119(a) is amended by adding at the end the following new paragraph:

"(3) All judicial review of agency action under this section shall apply the standards of review established in section 706 of title 5.".

SEC. 27. AUTHORIZATION OF APPROPRIATIONS.

(a) GAS AND HAZARDOUS LIQUID.—

(1) Section 60125(a)(1) is amended by striking subparagraphs (A) through (D) and inserting the following:

"(A) For fiscal year 2011, $92,206,000, of which $9,200,000 is for carrying out such section 12 and $36,958,000 is for making grants.

"(B) For fiscal year 2012, $96,144,000, of which $9,600,000 for carrying out such section 12 and $39,611,000 is for making grants.

"(C) For fiscal year 2013, $99,876,000, of which $9,900,000 is for carrying out such section 12 and $41,148,000 is for making grants.

"(D) For fiscal year 2014, $102,807,000, of which $10,200,000 is for carrying out such section 12 and $42,356,000 is for making grants.".

(2) Section 60125(a)(2) is amended by striking subparagraphs (A) through (D) and inserting the following:

"(A) For fiscal year 2011, $18,905,000, of which $7,562,000 is for carrying out such section 12 and $7,864,000 is for making grants.

"(B) For fiscal year 2012, $19,661,000, of which $7,864,000 is for carrying out such section 12 and $7,864,000 is for making grants.

"(C) For fiscal year 2013, $20,000,000, of which $8,000,000 is for carrying out such section 12 and $8,000,000 is for making grants.

"(D) For fiscal year 2014, $20,000,000, of which $8,000,000 is for carrying out such section 12 and $8,000,000 is for making grants.".

(b) EMERGENCY RESPONSE GRANTS.—Section 60125(b)(2) is amended by striking "2007 through 2010" and inserting "2011 through 2014".

(c) ONE-CALL NOTIFICATION PROGRAMS.—Section 6107 is amended—

(1) by striking "2007 through 2010." in subsection (a) and inserting "2011 through 2014.";

(2) by striking "2007 through 2010." in subsection (b) and inserting "2011 through 2014."; and

(3) by striking subsection (c).

(d) STATE DAMAGE PREVENTION PROGRAMS.—Section 60134 is amended by adding at the end the following:

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to provide grants under this section $2,000,000 for each of fiscal years 2011 through 2014. The funds shall remain available until expended.".

(e) COMMUNITY PIPELINE SAFETY INFORMATION GRANTS.—Section 60130 is amended—

(1) by striking "$50,000" in subsection (a)(1) and inserting "$100,000"; and

(2) by striking "2003 through 2010. Such amounts shall not be derived from user fees collected under section 60301." in subsection (d) and inserting "2011 through 2014.".

(f) PIPELINE TRANSPORTATION RESEARCH AND DEVELOPMENT.—Section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note) is amended—

(1) by adding at the end of subsection (d) the following:

"(3) ONGOING PIPELINE TRANSPORTATION RESEARCH AND DEVELOPMENT.—After the initial 5-year program plan has been carried out by the participating agencies, the Secretary of Transportation shall prepare a research and development program plan every 5 years thereafter and shall transmit a report to Congress on the status and results-to-date of implementation of the program each year that funds are appropriated for carrying out the plan."; and

(2) by striking "2003 through 2006." in subsection (f) and inserting "2011 through 2014.".

Mr. SULLIVAN. We are glad to have an opportunity today to hear from the experts how this discussion draft might be improved or otherwise modified to ensure pipelines remain a safe and economical means of transporting energy supplies and help power our economy and create jobs.

With that, I yield the balance of my time to Ranking Member Rush.

[The prepared statement of Mr. Sullivan follows:]

Opening Statement of the Honorable John Sullivan
Vice-Chair Subcommittee on Energy and Power
Committee on Energy and Commerce
Hearing on "The American Energy Initiative – Day 11"
July 15, 2011

Today marks the 11th day in our American Energy Initiative hearing. While the series has allowed us to examine a multitude of issues regarding energy production, regulation and consumption, today we will focus on what can be done to improve the safe and secure delivery of oil and natural gas via pipeline.

Several tragic pipeline accidents have occurred over the past year which demonstrates the need to reauthorize and enhance current safety laws. Despite this Committee room frequently being the site of many tense debates and discussions, pipeline safety is an issue I hope we all can work together on to produce meaningful and effective legislation to ensure the safety of our oil and gas pipeline infrastructure for the future while protecting the American people and our environment.

Over the past several years, we have been able to pass bipartisan bills on pipeline safety sometimes under suspension on the House floor. This is because our pipeline infrastructure touches every congressional district and accidents can happen anywhere and at anytime. Before us at the witness table we have a Democrat from California and a Republican from Montana. Both have dealt with major accidents recently and both understand Congress must act to strengthen current pipeline laws.

It is critically important that our pipeline infrastructure is both reliable and durable and to this end, the discussion draft under examination today makes many important modifications to existing law that will promote greater pipeline safety standards. We are glad to have an opportunity today to hear from the experts how this discussion draft might be improved or otherwise modified to ensure pipelines remain a safe and economical means of transporting vital energy supplies that help power our economy and create jobs.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. I want to thank you, Mr. Chairman.

And I want to thank all of you who are panelists who are gathered here today with us.

In the past, the issue of pipeline safety has been one that we have worked on in a bipartisan manner. And it is my sincere hope and expectation that we will continue on in that tradition as we tackle reauthorization of this bill, as well.

I look forward to today's hearing with such a stellar lineup of expert witnesses. And I commend you, Mr. Chairman, for holding this hearing today with such distinguished panelists.

I would be remiss if I did not acknowledge Representative Speier and Representative Rehberg, both of whom I know have a personal interest on the subject of pipeline safety. Representative Rehberg represents Montana, where they are dealing with the aftermath of the Silvertip pipeline spill in the Yellowstone River. And Representative Speier represents the district of San Bruno, where last summer's pipeline explosion claimed the lives of eight people.

So, while we so far have been fortunate to avoid loss of life in my own home State of Illinois, we have recently been experiencing pipeline leaks due to old and decrepit lines. Just yesterday, I had a conversation with the State's attorney of Will County, Illinois, where he informed me that recently there were three separate pipeline spills: two oil leaks and one butane leak. And he warned that future leaks are a real possibility due to the aging infrastructure.

Will County State's attorney's letter for the record, Mr. Chairman, on this condition of aging pipelines—I would like to introduce into the record these letters from the Will County State's attorney, dated July 14th, and signed by State's Attorney Jim Glasgow. I request unanimous consent that this letter be entered into the record.

Mr. SULLIVAN. No objection.

[The letter follows:]

JAMES W. GLASGOW
STATE'S ATTORNEY OF WILL COUNTY
Will County Court Annex
57 North Ottawa Street 6th Floor, Joliet, Illinois 60432
815-727-8453

July 14, 2011

Congressman Bobby Rush
First District, Illinois
2416 Rayburn Building
Washington DC 20515

Dear Congressman Rush:

This letter is to confirm our recent conversations regarding my concern as to the location and condition of the network of aging, buried pipelines that carry petroleum products, natural gas and other potentially hazardous materials across Will County. I fear the condition of these pipelines – some of which are 100-years-old and would never meet today's stringent safety standards – combined with a general lack of knowledge as to their location is putting the health and safety of our citizens at great peril.

The number of serious pipeline breaches that have caused significant environmental damage has increased dramatically in recent years. In the past year alone, Will County has been forced to deal with the environmental impacts of pipeline breaks in Romeoville, Lockport and Crete, all of which released petroleum products that contaminated soil, water, wetlands and/or public infrastructure. In addition, a breach in a pipeline that transports butane resulted in closures of streets and surrounding businesses for numerous days and raised public alarm regarding air quality and the volatility of the released gas. These leaks required immediate action from first responders including police, fire, emergency management agencies, environmental agencies and surrounding utilities. I should point out that these are only the major breaches that have forced onsite inspections by the Illinois Environmental Protection Agency. It is my understanding there is a great number of smaller incidents that do not rise to the level of such onsite inspections.

My office has spent countless hours working in cooperation with Illinois Attorney General Lisa Madigan and has joined her in filing lawsuits in two of these recent breaks in an effort to mitigate damages and to hold these companies accountable. However, reacting isn't good enough. To protect our citizens and our environment, we must take a more proactive approach to prevent these releases from occurring in the first place.

I am pleased that you share my concern and my sense of urgency on a matter that has local, state and national implications. I want to thank you for agreeing to read this letter into the record at this week's meeting of the Subcommittee on Energy and Power.

Our dialogue is an excellent starting point. I look forward to working with your office on developing a plan that will enhance public safety by improving the condition of buried pipelines.

Sincerely,

James W. Glasgow
State's Attorney of Will County

JWG/cj

Mr. RUSH. And so I look forward to hearing from all of our witnesses today, including our House colleagues, to gauge their thoughts on the draft bill we are discussing here.

Additionally, I am interested to hear Representative Speier's ideas on what elements of her own bill, H.R. 22, the Pipeline Safety and Community Empowerment Act of 2011, that we may be able to incorporate to strengthen the legislation that we are considering in this subcommittee.

As far as the discussion draft, Mr. Chairman, I am committed to working with you in good faith to improve and strengthen this legislation where necessary in order to ensure that we have the strongest bipartisan bill possible moving forward. As I understand it, many elements of this discussion draft mirror provisions in the Senate bill, but there are some outstanding areas where I think we could make some vital improvements so that we have a stronger bill that can gain bipartisan support on the subcommittee, the full committee, as well as when this bill reaches the floor.

Some areas where I believe this bill can be strengthened include ensuring that there is regulation for gathering lines when appropriate, tightening up the integrity of management system requirements, and ensuring that information regarding emergency response plans and industry-developed safety standards are indeed available to the public at large.

Mr. Chairman, if we are able to do this work on this bill together and include input from both the majority and the minority sides, then I am confident that we can move forward with this legislation from this subcommittee to a point where it can actually pass the Senate and also maybe the President will sign it in to law.

The issue of pipeline safety, in the face of everything that currently takes place, from various spills and explosions to the debates over fast-tracking various pipeline proposals, is one that we must act on because this Nation needs updated and comprehensive pipeline safety.

So, once again, Mr. Chairman, I applaud you and I applaud Chairman Whitfield in his absence for holding this timely hearing today. And I look forward to hearing from all of our witnesses.

Thank you, and I yield back the 32 seconds.

Mr. SULLIVAN. Thank you, Ranking Member Rush.

And next I would like to recognize the chairman of the full Energy and Commerce Committee, Congressman Upton, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you very much.

Today, this subcommittee will examine a discussion draft of the Pipeline Infrastructure and Community Protection Act of 2011.

Pipeline safety is an issue that crosses regions, politics, and parties—yes, it does—and it affects all of us and our constituents in the same manner. Though pipelines remain the safest means to transport oil and natural gas, over the past year we have witnessed a number of accidents that have destroyed property, ecosystems, and, most importantly, lives of innocent people.

Last summer, an old pipeline ruptured and spilled into a stream and river which flows through my district. The spill sent over 20,000 barrels of oil into Talmadge Creek and Kalamazoo River. Different alarms sounded in the operator's control room for nearly 18 hours before the leak was confirmed. And, after that, it took an hour and 20 minutes for the initial call to the National Response Center to be placed.

In September of last year, a gas pipeline in San Bruno, California, exploded, killed 8 people in addition to destroying 37 homes. It took over an hour for technicians to manually shut off the flow of gas, which continued to feed the fireball.

And, of course, last month, a pipeline buried beneath the riverbed of the Yellowstone River near Laurel, Montana, ruptured and spilled up to a thousand barrels of oil into the Nation's largest undammed river.

I look very much forward to testimony from ExxonMobil and Congressman Rehberg, as well as their answers to our many questions concerning the recent spill in Montana. Though the discussion draft does not specifically address some of the preliminary issues raised by the incident, I hope that what we learn today can provide better understanding on the adequacy, or lack thereof, regarding current pipeline safety standards related to water crossings.

What all of these incidents tell us is that pipeline safety laws must be enhanced to prevent tragedies like these in the future and better prepare us for response and containment once they occur.

The Pipeline Infrastructure and Community Protection Act is the Energy and Commerce Committee's initial offering into this year's drive to reauthorize pipeline safety laws. We are fully committed to working in a bipartisan, bicommittee, and bicameral fashion to get a pipeline safety bill signed this year in to law. The public demands it, and so does our responsibility as their elected leaders.

Among its many provisions, the discussion draft under examination today seeks to: one, set a 1-hour time limit for operators to report incidents to the National Response Center, similar to legislation in the last Congress that was passed on the House floor; two, require the use of automatic or remote-controlled shutoff valves that can stop leaks and spills in a fraction of the time needed for manual valves; three, require better leak-detection technologies for the monitoring and assessment of leaks; four, substantially increase civil penalties on pipeline operators who have major accidents; five, require highly enhanced inspection techniques and technologies which cover more pipeline mileage than before; and, six, increase the number of pipeline inspectors at the Department of Transportation. Perhaps also, the idea that we will require pipelines to be buried further underneath waterways, as probably was the cause in Montana.

This discussion draft is an important first step in getting a companion House bill out of the starting blocks and on a trajectory to merge with existing Senate legislation. It is my intent to move a bill through this subcommittee over the next couple of weeks and have full committee action upon our return from the August recess.

I look forward to the conversation today and yield the balance of my time to the gentleman from Nebraska, Mr. Terry.

[The prepared statement of Mr. Upton follows:]

Opening Statement of Chairman Fred Upton
Committee on Energy and Commerce
Hearing on "The American Energy Initiative – Day 11"
July 15, 2011

Today the subcommittee will examine a discussion draft of the "Pipeline Infrastructure and Community Protection Act of 2011." Pipeline safety is an issue that crosses regions, politics, and parties. It affects all of us and our constituents in the same manner. Though pipelines remain the safest means to transport oil and natural gas, over the past year we have witnessed several accidents that have destroyed property, ecosystems, and most importantly, the lives of innocent people.

Last summer, an oil pipeline ruptured and spilled into a stream which flows through my district. The spill sent over 20,000 barrels of oil into Talmadge Creek. Different alarms sounded in the operator's control room for nearly 18 hours before the leak was confirmed, and after that, it took one hour and twenty minutes for the initial call to the National Response Center to be placed.

In September of last year, a gas pipeline in San Bruno, California exploded and killed 8 people in addition to destroying 37 homes. It took over an hour for technicians to manually shut-off the flow of gas which continued to feed the fireball.

Just this month, a pipeline buried beneath the riverbed of Yellowstone River near Laurel, Montana ruptured and spilled up to 1,000 barrels of oil into the nation's largest undammed river. I very much look forward to testimony from Exxon Mobil and Congressman Rehberg as well as their answers to our many questions concerning the recent spill in Montana. Though the discussion draft does not specifically address some of the preliminary issues raised by this incident, I hope what we learn today can provide better understanding on the adequacy or lack thereof regarding current pipeline safety standards related to water crossings.

What all of these incidents tell us is pipeline safety laws must be enhanced to prevent tragedies like these in the future and better prepare us for response and containment once they occur. The Pipeline Infrastructure and Community Protection Act is the Energy and Commerce Committee's initial offering into this year's drive to reauthorize pipeline safety laws. We are fully committed to working in a bipartisan, bicommittee, and bicameral fashion to get a pipeline safety bill signed into law this year. The public demands it and so do our responsibilities as their elected leaders.

Among its many provisions, the discussion draft under examination today seeks to:

1) set a one-hour time limit for operators to report incidents to the National Response Center;

2) require the use of automatic or remote-controlled shut-off valves that can stop leaks and spills in a fraction of the time needed for manual valves;

3) require better leak detection technologies for the monitoring and assessment of leaks;

4) substantially increase civil penalties on pipeline operators who have major accidents;

5) require highly-enhanced inspection techniques and technologies which cover more pipeline mileage than before; and,

6) increase the number of pipeline inspectors at the Department of Transportation.

This discussion draft is an important first step in getting a companion House bill out of the starting blocks and on a trajectory to merge with existing Senate legislation. It is my intention to move a bill through this subcommittee over the next few weeks and have full committee action upon our return from the August recess.

I look forward to the conversation today as well as comments that will help us improve the discussion draft before it is introduced as a bill. With that I yield the balance of my time.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman.

It is my hope that both this committee and T&I will move to report a very strong piece of legislation by the end of this year.

When we hear of tragedies involving pipelines in San Bruno or in Montana, our hearts go out to those affected. But, as legislators, it is necessary and important that we quickly learn from these accidents and move to write laws that protect human health and the environment—bearing in mind that pipelines remain the safest and most efficient means of carrying vital energy across great distances.

Pipelines are such an important part of our commerce, and all involved must have the confidence that the system works well. I appreciate the outline that our chairman made of improvements that could be made to pipeline safety.

And I yield back.

Mr. SULLIVAN. Thank you, Mr. Terry.

Next, I would like to recognize Mr. Waxman.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Today, we will examine the safety of the Nation's oil and natural gas pipelines and begin to consider legislation to update and strengthen our pipeline safety laws.

During the last 12 months, a litany of tragic failures has reinforced the need for stronger pipeline safety laws.

Since last month's hearing on this topic, ExxonMobil's Silvertip pipeline ruptured in Montana, spilling an estimated 31,500 to 42,000 gallons of crude oil into the Yellowstone River. It appears that the oil may have been carried as far as 240 miles downstream. Pockets of oil have been confirmed at least 90 miles down the river. Ranchers are struggling to prevent the contamination from destroying their livelihoods. We don't yet know the cause of this spill, though much of the focus is on whether the pipeline buried beneath the river was uncovered by erosion from flooding and became vulnerable to an occlusion from debris.

During May of this year, two serious spills occurred on the first Keystone pipeline, which brings Canadian tar sands oil to refineries in Illinois and Oklahoma. This is a brand-new pipeline. It was predicted to spill no more than once every 7 years, but in just 1 year of operation, it has reported 12 separate oil spills.

In February, a natural gas pipeline in Allentown, Pennsylvania, exploded, killing 5 people and damaging more than 50 homes and businesses. This was an old cast-iron pipeline.

Last September, a natural gas pipeline on the other side of the country ruptured and exploded in San Bruno, California. Eight people died; many more were injured. The gas-fed inferno spread from house to house, driven by the wind. Thirty-eight homes were destroyed, and 70 more were damaged. The explosion left behind a suburban street with a massive crater and burned-out vehicles.

The vice chairman of the National Transportation Safety Board described it as, quote, "an amazing scene of destruction."

Two months before the San Bruno explosion, a crude oil pipeline ruptured near Marshall, Michigan. Over 800,000 gallons of oil spilled into the Talmadge Creek and then flowed into the Kalamazoo River. The cleanup is ongoing a year later and is expected to cost $550 million.

These are just some of the catastrophic pipeline failures our country has experienced during the past 12 months. These failures have occurred all around the country. From California and Montana to Michigan and Pennsylvania, natural gas pipelines have exploded; oil pipelines have ruptured. Some failures involved old, outdated pipelines. Others involved brand-new, supposedly state-of-the-art pipelines. When we step back and look at the last 12 months, I think it is impossible to conclude that our pipeline safety laws are working as intended.

We need to seize this opportunity to reauthorize and update the pipeline safety statute. The Senate Commerce Committee has produced a moderate, bipartisan bill. I think the Senate bill is a good place to start, and I hope that we can work together to strengthen and improve that bill.

The discussion draft we will be examining today contains several of the same provisions but also weakens some other provisions. With the benefit of the testimony we will hear today, let us use this discussion draft as a foundation to craft a strong bill together. I don't think there is any reason for this to be partisan issue. We want to work in a cooperative fashion to produce a good bill that will meaningfully enhance pipeline safety.

Mr. Chairman, I want to now yield the remainder of my time to Mr. Green from Texas.

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Mr. Chairman, thank you.

I thank both the ranking member of the full committee and the subcommittee for giving me time to speak.

I am pleased we are having this hearing today. Pipeline safety is probably an utmost important issue of my constituents, because many are employed in the oil and gas industry and thousands live in communities near pipelines in my Houston-area district.

As this process moves forward, I look forward to working with my colleagues on both sides of the aisle to build consensus and move a bill that will update the regulations in a way that makes sense. So far, I am pleased with the Senate bill, which is moving quickly over there, has garnered bipartisan support, and hope that we can have the same success here.

This hearing is a valuable step to analyze the strengths of both bills and examine areas that need improvement. And I appreciate our witnesses being here, particularly our colleagues.

And, Mr. Chairman, we have to get this right with pipeline safety simply because the alternative is putting more trucks on the road carrying those same chemicals, or those same products, and that is why this is so important.

I yield back my time.

Mr. SULLIVAN. Thank you, Mr. Green.

At this time, we will hear testimony from our first panel of witnesses.

I would first like to recognize Congressman Denny Rehberg from Montana.

STATEMENTS OF HON. DENNY REHBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA, AND HON. JACKIE SPEIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

STATEMENT OF HON. DENNY REHBERG

Mr. REHBERG. Thank you for recognizing me.

And I want to offer my sincere appreciation to you, Chairman Sullivan, for chairing this meeting today; Mr. Upton, for calling the meeting; Ranking Member Rush, for your kind assistance today and your recognition of the panel that follows the two of us, because the staff really put a lot of work in to it. And I think you are going to hear a lot about the necessity and the opportunities in pipeline safety.

Your committee must accomplish two critical things today. First, we need to share our knowledge in regards to the ExxonMobil spill so that we can determine what can be done to prevent it from happening again. Second, if Congress moves forward with authorization of the Pipeline Infrastructure and Community Protection Act of 2011, I want to be absolutely certain that we are doing everything that we can to prevent future environmental, health, economic impact from pipeline failures.

For many, the Silvertip pipeline breaking was just another news story about an oil spill, but for Montanans, this is our home. Water and rivers play a big role in the lives of many Montanans. For the Maclean family in the famous movie "A River Runs Through It," it was the Big Blackfoot River. For me and my family, it is the Yellowstone River. I grew up in Billings, just a few miles from the riverbanks of the Yellowstone. As a boy, I swam and fished that river. I spent time with my family and friends floating down it in inner tubes and barbecuing on its banks. In fact, I have lost a couple of high school friends in separate drowning accidents in that river. You could say that, like thousands of other Montana families, the Yellowstone is our family river. So this oil spill is a pretty big deal for us. We have questions, and we deserve answers.

As Montana's Congressman, I fly into Billings just about every week. I fly over the Yellowstone River, but I also fly over the oil refinery that provides so many good jobs to our community. Just like the river is a part of Montana's culture, so is the energy industry.

Montana is a warehouse of energy options. We have it all: wind, solar, geothermal, biomass, oil, gas, coal, biofuels. These energy options help us provide the energy this country needs to end our addiction to foreign oil and creates good-paying jobs.

The reason I point this out is simple: While there might be some people out there who think that we should develop our resources without any regard for the environment, that is not me. And there are others who think we should stop all human impact on the envi-

ronment whatsoever. That is not me either. Neither of these options work for Montana or America.

I am fifth-generation Montanan. I hope to pass it on to the sixth generation. I was a rancher before I came to Congress, and I will be a rancher after I leave Congress. And, ironically, I have a petroleum pipeline that crisscrosses my ranch. It is a Conoco pipeline. And I can't begin to tell you what good neighbors they have been. They flag it, they monitor it, they work it. I receive no financial benefit. My great-grandfather actually granted the easement for this pipeline.

So these kind of pipeline legislations matter a lot to me. I want to know that private-property rights are respected, I want to know that people are respected, but that the environment is respected as well. Because, while I receive no financial benefit from a pipeline that crisscrosses my ranch, I would have the benefit—or, the failure or any of the problems as a sidenote of the failures of a pipeline that exists and occurs. So this kind of legislation is important to those of us who work the land.

We must demand a third option, a way to utilize our natural resources while doing everything we can to protect the environment. It is a reasonable and responsible expectation. The United States is leading the way in providing clean, effective energy. We are not perfect, but when there is a spill or a mistake, you won't find a more scrutinized response anywhere in the world.

This is one of the reasons domestic energy production is such a good idea. Our standards and expectations are so much higher than the countries we import oil from. A kilowatt hour of energy produced in the United States is, on balance, going to be cleaner and safer than a kilowatt hour of energy we import.

In Montana, one of our most valuable resources is nature itself. Montanans get it. We hunt, we hike. We don't just visit the outdoors; we live there. That is why I have always said Montanans are excellent stewards of the land and that we don't need Federal bureaucrats telling us how to manage our land and wildlife.

This spill was a failure that did not live up to that standard, and we want to know why, we want to know what is being done, and we want to know how to prevent it in the future. And that is what this hearing is about.

In the meantime, Montanans of all backgrounds have already come together in the Yellowstone Valley to clean up this mess. ExxonMobil has hundreds of people on the ground working closely with local, State, and Federal officials. And they are joined by scores of regular Montanans who are volunteering their personal time to help clean up the spill.

Maybe more than any testimony here, I think that speaks volumes about the urgency of this response. In Montana, when the chips are down, you don't wait for outside help. You roll up your sleeves, you join your neighbor on the front line.

Again, Mr. Chairman, thank you for the hearing today. I stand ready to answer any questions from my unique perspective of being on the ground from day one of July 1, working with Exxon, EPA, and anybody else that will work with us to see that, one, we find out what happened; two, we fix the problems; and, three, it never happens again.

Thank you, Mr. Chairman.

Mr. SULLIVAN. Thank you, Congressman Rehberg.

I would just like to make an announcement. I would like to announce that the third panel will be testifying next Thursday, as we expect a lot of votes on the floor here very soon in the next hour. So I apologize for that. But it seems to be able to work better if we do that, and I apologize if it inconveniences anyone. I know it probably does. Thank you.

Next, I am pleased to welcome Congresswoman Jackie Speier to deliver her testimony.

STATEMENT OF HON. JACKIE SPEIER

Ms. SPEIER. Thank you, Mr. Chairman, thank you, Ranking Member Rush and colleagues, for the opportunity to speak to you.

Let me say at the outset that I am thrilled that this committee is going to move swiftly to address this issue. I have a couple of concerns that I will address this morning, but at the outset let me say that, you know, before September 9th, I knew very little about this issue. I now feel like I have a Ph.D. in it. I hardly knew about the National Transportation Safety Board. I knew nothing about PHMSA. I didn't know what a maximum operating pressure was. I didn't know what a psi was. But I know all about all of those things today.

I also know that I went to the funerals of eight people in my district. I visited the burn center in San Francisco where seven victims slept, hung to life for 4, 5, 6 months. This is a tragedy not just for the San Francisco Bay area. This was a national story; it was an international story.

And for as much as we are talking about today, there are a couple of things that are not in this bill that need to be addressed.

One is, if you look at pipeline safety historically and the laws that we have put on the books, we grandfathered in all of the pipes that were pre-1970. So all of the older pipes are not subject to the kind of scrutiny that newer pipes are.

This was a pipe that was actually placed in service in 1956. It has lots of problems. The National Transportation Safety Board will come out with its report at the end of August. The wells appear to be flawed. The operator didn't know what was under the ground, thought it was a seamless pipe when, in fact, it was a seamed pipe; didn't have the instrumentality to determine that the wells were poor; had maximum allowable operating pressures that exceeded what probably should have been used. But, having said all of that, they followed the law. They followed the law because they were grandfathered in.

Now, I have introduced legislation that addresses a number of these elements. The local operator in my community, Pacific Gas and Electric, has implemented every single measure that is in my bill. Now, they have done it for a lot of reasons, but they are looking at over a billion dollars in liability right now. And for all the operators across the country, the kinds of steps that we are recommending, I think, are very important.

One of the things that is not addressed in either bill is notice to the residents. PG&E has noticed everyone in their region if they are 2,000 feet from a transmission line. Now, that is important and

good not just for the resident but for the operator. If the homeowner doesn't know that they have a transmission line in their backyard or front yard and they are putting up an in-law unit, they are not going to take the kinds of precautions necessary. And, as we know in pipeline safety, most ruptures occur from third-party impact.

So that is a very important feature. PG&E did it. They did it swiftly. It was not, I think, an extraordinary cost to them. It is notice to not only the residents, but it is also notice to the local first responders. The fire chief in San Bruno didn't even know there was a transmission line running through the middle of the street.

Now, it took an hour and 30 minutes or more for PG&E to turn off the gas. Now, I am passing out to you photographs. This photograph shows you the kind of fireball, 30 feet in the air or higher. They thought it was a plane that had crashed at first.

But it took an hour and 30 minutes for them to turn off the gas because they had to go all the way to another community to get the keys to open the gate to get to the valve. If there are automatic and remote shutoff valves required in high-consequence areas—these are areas where you have high population and/or seismic risk—that could have been turned off within 20 minutes at the very most.

So the fire raged for an hour and a half, taking lives and extensive property. Over 37 homes were demolished. And if you look at this, it looks like a war zone in many of these pictures. And this community is still trying to recover today.

So I think it is very important for us to look at putting automatic and remote shutoff valves not just on new construction; it is the most vulnerable construction that is pre-1970 that we should be concerned about. And we should be concerned about it in high-consequence areas, where there is high population, where population has grown up around transmission lines that were put in place many decades ago. It is no one's fault at this point. It is just that we have to make it safe for the consumers, for the ratepayers.

And I think as we look at what the costs are associated with it, I can tell you as one person who has witnessed this firsthand, if it means slightly more on my PG&E bill to make sure that there is going to be safety first, then I am willing to pay that price to make sure that lives aren't lost.

Now, I have a written statement that I am not going to spend much time on because I think that it kind of speaks for itself. But I do want you to appreciate that there has to be disclosure of the location of these pipelines to the first responders. If they don't know where they are located, if they are not trained, then they are sitting ducks when an explosion occurs. There has to be notice to the consumer; that automatic and remote shutoff valves need to be put in place in high-consequence areas.

The language in both bills is really pretty squishy. It is basically, you know, they need to use the best technology moving forward. Well, I am much more concerned about the older pipelines than I am the newer pipelines.

And for all those operators that have pipelines that they do not have paperwork for—and in 30 percent of PG&E's system, they do not have paperwork, they do not know what is under the ground—

in those situations, that pipeline needs to be hydro-tested, because there is no way of knowing whether or not it is safe. There is a whole new technology around what is called "smart pigging," but if you have pipe diameter that ranges from 30 to 24 to 40, you are not going to be able to use smart pigging. So the only way to make sure that that is safe is to do the hydrostatic testing.

None of that, frankly, is in the legislation today.

So I urge my colleagues to recognize—if these pictures don't speak a thousand words, I don't know what does. This is not anything you want to have happen in your district. And when it does, it consumes you for years. And it has been a huge toll in my region and something that really needs to be addressed on a Federal level.

I yield back.

Mr. SULLIVAN. Thank you, Congresswoman Speier.

I would like to recognize myself for a question to Congressman Rehberg.

Could you briefly tell us about how the Unified Command is working in Montana?

Mr. REHBERG. Yes. You may have seen some press where the Governor pulled out of the Unified Command, but for the most part, they have worked extremely well together. And so, you know, there is probably some politics over policy involved in the situation, but we are really pleased.

The EPA has done a great job. We have the Coast Guard involved, the U.S. Fish and Wildlife Service, the State Department of Fish and Wildlife and Parks, the DEQ in the State of Montana. And, really, they have worked well together. And that doesn't always happen.

And one of the reasons, I think, is because Exxon stepped forward and said, "We are responsible." As you know with the gulf situation, you get a lot of finger-pointing. Everybody is saying, "Not me, not me, not me." Well, in this particular case, Exxon stepped forward and said, "We are going to make you whole. We are going to stay until the job is done. We are going to clean up the environment. We are going to pay those that have a loss of use on their properties." And so, you know—to allay some of the fears of the economics. There are people that can't graze their pastures because of the oil residue. Exxon has got people in there and working to figure out a fair settlement so that they can get in and fix it.

So, for the most part, the coverage has been good, the comments have been as good as possible in a very emotional situation. But we just appreciate the Federal effort, the State effort, the local effort, and the company effort to do the best they can.

Nobody wanted this to happen. Most of all, the company did not. But we think the Unified Command has worked very well. It has been a good process. And thank you for the question.

Mr. SULLIVAN. Thank you, sir. That sounds good.

And I would like torecognize Ranking Member Rush.

Would you like to ask a question?

Mr. RUSH. To Congressman Rehberg, as the Representative who represents an area where Exelon is based, I am glad to hear good comments about the company—oh, Exxon.

Oh, OK. Well, I represent Exxon. I thought he said Exelon. OK.

All right. Well——

Mr. REHBERG. Yes, sir, we actually have three refineries in the area, so it is a major part of our economy.

Mr. RUSH. Oh, OK. So it is Exxon, OK.

Mr. REHBERG. It is Exxon, Conoco, and then there is a co-op.

Mr. RUSH. OK. I am sorry, I misunderstood.

I just want to—Congresswoman Speier, I want to just identify with your comments. I was just talking with a man, the State's attorney in my own district, in the Will County area. And he is afraid that, whereas we have not had this kind of spill or any kind of explosion that you have experienced, we are afraid that that is going to happen because of—you know, and we have seen those start off, they start off small, and then they kind of build until you have a giant explosion.

And I certainly concur with your attitude about how we can strengthen this bill. And I want to just thank you for the timeliness of your comments and insightfulness of your comments. I think you have helped us to—with your attention, your advice, and your consideration, you have certainly helped us to strengthen this bill in a lot of ways. And I really appreciate it and appreciate the fact that you are doing something to help us out.

But I was curious, in reading this comment on the notification to your citizens, you seem to be disappointed, very disappointed. How can we reallyassure that those who live in the communities, that they have proper response, proper alerts, and that they really need and have some prior knowledge. I think if they knew or know beforehand that they have pipelines running close to their properties, then they would be more mindful of some of the things that may give us some forewarnings.

So can you address the issue of prior notification or notification of your constituents?

Ms. SPEIER. Thank you, Ranking Member Rush. I would be happy to.

It is important to note that the industry has been driving policy—not surprising, but very much the case as it relates to pipeline safety. Most of the studies that are commissioned by PHMSA, 60 percent of them are funded by the trade association, and the trade association determines whether or not to do certain studies.

The trade association has also developed the, quote, "educational component." And in PG&E's case, they paid an entity that was somehow related to the trade association to do, quote, "education." And they did a survey, and the survey was exposed at the National Transportation Safety Board hearing that occurred in March on the explosion. And it was shameful that how much ever money was spent on the survey to ratepayers, they got a response of 15 people. Thousands and thousands of surveys sent out; 15 people responded.

Now, PG&E has taken it upon themselves to notify every resident. They did it simply and swiftly. If you are going to bill people, you can also send a separate notification out to tell them that they are within 2,000 feet of a transmission line.

Now, it is important to the resident, but it is also important to the operator, because the third-party digs are the most likely occurrence of ruptures. So, right-to-know should be very important to everybody—to those that are living next to a transmission line, to the first responders. And that is why I think that is so critical.

There has been a lot of money spent on, quote, "education" that has been absolutely pointless. And I think that we need to take the next step in terms of right-to-know.

Mr. RUSH. Thank you, Mr. Chairman. I yield back.

Mr. SULLIVAN. Thank you, Mr. Rush.

I would like to thank our panelists, Congresswoman Speier and Congressman Rehberg. Thank you so much.

And now we would like to move to our next panelists, get them up here.

Thanks.

Mr. REHBERG. Thank you.

Mr. SULLIVAN. Well, I would like to thank you for being here.

If you are ready, I would like to recognize Ms. Quarterman, the head of PHMSA, for her statement.

STATEMENTS OF CYNTHIA L. QUARTERMAN, ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, AND RANDALL S. KNEPPER, DIRECTOR, SAFETY DIVISION, NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES

STATEMENT OF CYNTHIA L. QUARTERMAN

Ms. QUARTERMAN. Thank you. Good morning, Vice Chairman Sullivan, Ranking Member Rush, members of the subcommittee. Thank you for the opportunity to appear today to discuss the Pipeline and Hazardous Materials Safety Administration's oversight of America's vast network of energy pipelines and reauthorization of the pipeline safety program.

PHMSA and our State partners' safety oversight provide critical protection for the American people and our environment. The Department is actively working to ensure the safety and reliability of the Nation's pipeline infrastructure. The recent ExxonMobil incident has focused all of our attention on the importance of preventing pipeline failures. PHMSA has fulfilled all but one of the requirements of the Pipeline Inspection Protection and Enforcement Safety Act of 2006, and we are in the final stages of addressing that last remaining mandate.

To help combat pipeline vulnerability to excavators, PHMSA continues to provide State Damage Prevention Grants for State one-call centers, State pipeline safety agencies, and other authorized recipients. PHMSA also provides comprehensive training for all State and Federal pipeline safety inspectors.

Through rulemakings and pipeline safety advisories since 2009, PHMSA has closed a record 12 of the National Transportation Safety Board's safety recommendations. During that same period, PHMSA also obtained closure on all of its pending Office of Inspector General and Government Accountability Office recommendations.

PHMSA looks forward to working with Congress on reauthorizing its pipeline safety program. We are pleased that the Pipeline Infrastructure and Community Protection Act of 2011 picked up nearly all of the provisions of the administration's proposal. At the

same time, we need to remember that each new mandate will require rulemakings to be developed and published in compliance with the Administrative Procedure Act and subject to review of our two technical advisory committees.

As for some of the bill's provisions, PHMSA supports increasing administrative civil penalties for violations leading to deaths, injuries, or significant environmental damage, especially since maximum penalties have not increased in almost 10 years. However, we do not support removing maximum penalties for incidents that occur in high-consequence areas or adding the requirement that those violations be willful and knowing.

Significant spills and incidents also have occurred on gathering lines, and we strongly believe that Congress should eliminate exemptions to allow PHMSA to regulate the remaining pipeline mileage that is currently unregulated. We also do not support mandatory removal of class locations before PHMSA has had a chance to consider the issue. We support prohibiting States from being exempt from damage prevention—creating exemptions from damage-prevention laws; however, we suggest that Congress take a phased approach to any funding restrictions to allow time for States to remove those exemptions.

Reforms to allow for the collection of additional data on physical attributes and pipeline locations are also supported. In addition, we support reforms to provide us with reimbursement from project applicants for design review, consulting and field oversight, as well as for costs incurred to review special permit applications.

While Congress works through the reauthorization of the pipeline safety program, PHMSA is moving forward and taking a hard look at our Nation's pipelines. Many of the provisions that are in your bill are things that we are already considering and working on regulatory implementation of.

Under Secretary LaHood's leadership, we have developed the Pipeline Safety Action Plan and will ensure the safety of the American people and the integrity of the pipeline infrastructure.We are also executing this plan in a transparent manner, with opportunities for public engagement and a dedicated Web site.

In closing, we look forward to working with Congress to address any issues you may have regarding PHMSA's pipeline safety program and the regulation of gas and hazardous-liquid pipelines. Thank you.

[The prepared statement of Ms. Quarterman follows:]

CYNTHIA L. QUARTERMAN
ADMINISTRATOR
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
July 15, 2011

The Pipeline and Hazardous Materials Safety Administration (PHMSA) and our State partners' safety oversight provide critical protection for the American people and our environment. The recent ExxonMobil incident has focused all of our attention on the importance of preventing pipeline failures. PHMSA has fulfilled all but one of the requirements of the Pipeline Inspection, Protection and Enforcement Safety (PIPES) Act of 2006, and we are in the final stages of addressing the last remaining mandate.

To help combat pipelines' vulnerability to excavators, PHMSA continues to provide State Damage Prevention grants for state one call centers, state pipeline safety agencies and other authorized recipients. Through rulemakings and pipeline safety advisories since 2009, PHMSA has closed 12 of the National Transportation Safety Board's safety recommendations. During that same period, PHMSA also closed all of its pending Office of Inspector General and Government Accountability Office recommendations.

PHMSA looks forward to working with Congress on reauthorizing its pipeline safety program. We are pleased that the "Pipeline Infrastructure and Community Protection Act of 2011" picked-up nearly all of the provisions of the Administration's proposal. At the same time, we need to remember that each new mandate will require rulemakings to be developed and published in compliance with the Administrative Procedure Act and in compliance with our two Technical Advisory Committees.

As for some of the bill's provisions, PHMSA supports increasing administrative civil penalties for violations leading to deaths, injuries, or significant environmental damage, especially since maximum penalties have not increased in almost 10 years. However, we do not support removing maximum penalties for incidents that occur in High Consequence Areas.

Significant spills and incidents have occurred on gathering lines and we strongly believe that Congress should eliminate exemptions to allow PHMSA to regulate the remaining pipeline mileage that is currently unregulated. We also support prohibiting states from being exempt from damage prevention laws. However, we suggest that Congress take a phased approach to any funding restrictions to allow time for states to remove these exemptions.

Reforms to allow for the collection of additional data on physical attributes and pipeline locations should also be supported. In addition, we support reforms to provide us with reimbursement from project applicants for design review, consulting and field oversight, as well as for costs incurred to review applications.

While Congress works through the reauthorization of the pipeline safety program, PHMSA is moving forward and taking a hard look at our nation's pipelines. Under Secretary LaHood's leadership, we've developed a pipeline safety action plan that will ensure the safety of the American people and the integrity of the pipeline infrastructure. We are also executing this plan in a transparent manner with opportunities for public engagement and a dedicated website.

UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

Hearing on
The American Energy Initiative: Pipeline Infrastructure and Community Protection Act of 2011

Before the
Committee on Energy and Commerce
Subcommittee on Energy and Power
United States House of Representatives

Written Statement of Cynthia L. Quarterman
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department Of Transportation

Expected Delivery 9:30 a.m.
July 15, 2011

Quarterman Written Statement
The American Energy Initiative: Pipeline Infrastructure and Community Protection Act of 2011

Chairman Whitfield, Ranking Member Rush, members of the Subcommittee, thank you for the opportunity to appear today to discuss the Pipeline and Hazardous Materials Safety Administration's (PHMSA) oversight of America's vast network of energy pipelines and reauthorization of the pipeline safety program.

Safety is the number one priority of Secretary Ray LaHood, myself, and the employees of PHMSA. PHMSA and our State partners' safety oversight of the nation's pipelines provides critical protection for the American people and our environment. The Department is actively working to ensure the safety and reliability of the nation's pipeline transportation infrastructure and prevent releases on the 2.5 million miles of pipelines it oversees. While the pipeline industry's overall safety record continues to improve as the result of recently implemented regulatory initiatives, the recent ExxonMobil incident has focused all of our attention on the importance of preventing pipeline failures

Recently implemented regulatory initiatives have fulfilled the majority of statutory requirements of the Pipeline Inspection, Protection and Enforcement Safety (PIPES) Act of 2006. PHMSA is in the final stages of developing a Notice of Proposed Rulemaking to address the last remaining PIPES Act mandate covering federal enforcement of third party excavation damage to pipelines. The following is a short description of several other key provisions.

I. PIPES ACT OF 2006 KEY ACCOMPLISHMENTS

Control Room Management - In December 2009, PHMSA published a final rule to improve control room management for pipeline operators. The rule requires pipeline operators to develop and implement procedures to reduce employee fatigue, improve employee training and

response to alarms, and clearly define the roles and responsibilities of employees in control rooms. The rule was set to be implemented by early 2013.

Recently we have accelerated the implementation of this rule. The majority of the procedures will now be implemented by October 1, 2011, 16 months sooner than the original rule. The deadline for pipeline operators to implement regulations related to training and alarm management also will be shifted to August 1, 2012, six months sooner than the original rule.

State Partnership - PHMSA increased funding to its State pipeline safety partners. PHMSA also provides comprehensive training for all State and Federal pipeline safety inspectors on both compliance oversight and safety investigation functions. To support implementation of the distribution integrity management (DIMP) rule, PHMSA trained State inspectors, helped develop inspection forms, FAQs, and inspection guidance for implementing DIMP, and performed joint Federal-State pilot inspections to validate and enhance inspection forms and guidance.

Damage Prevention - The vast majority of America's pipeline network is underground making pipelines vulnerable to "dig-ins" by excavators. While excavation damage is 100% preventable, it remains a leading cause of pipeline incidents involving fatalities and injuries. PHMSA continues to provide State Damage Prevention grants.

Eligible grantees include State one call centers, State pipeline safety agencies, or any organization created by State law and designated by the Governor as the authorized recipient of the funding. PHMSA also uses the authority in the PIPES Act to promote public education awareness with national programs such as the "811- Call Before You Dig" initiative and the Common Ground Alliance (CGA). PHMSA continues to provide funding assistance for CGA's 811 advertising campaign.

Emergency Response – PHMSA funds grants to support training for firefighters and others to respond to pipeline emergencies safely, including the development of a new internet based training program through a cooperative agreement with the National Association of State Fire Marshals. The training curriculum, "Pipeline Emergencies – 2nd Edition," builds off of the positive results of the previous edition, which helped train over 45,000 first responders in the U.S. on how to safely respond to natural gas and hazardous liquid pipeline leaks, spills and fires. When incidents occur, PHMSA works closely with responding Local, State, and Federal officials to assure the impact to the public and environment is minimized and that the pipeline company is fully cooperating on safety issues.

II. STATUS OF RECOMMENDATIONS FROM OVERSIGHT AGENCIES

PHMSA works with many governmental partners to promote safety. The National Transportation Safety Board (NTSB), the Department's Office of Inspector General (OIG), and the Government Accountability Office (GAO) have a vested interest in the safe and reliable operation of the nation's pipeline infrastructure. PHMSA is working aggressively to be responsive to all of these organizations and their recommendations.

Through rulemaking and pipeline safety advisories since 2009, PHMSA has worked hard to obtain NTSB closure on 12 of the Board's safety recommendations, addressing leak detection systems, excess flow valves, human fatigue, and operations of pipeline companies' control rooms, as well as integrity management for distribution pipelines in high consequence areas. Currently, six safety recommendations remain open where the NTSB has communicated it has accepted PHMSA's response to how the agency is addressing each recommendation. Additionally, the NTSB issued PHMSA two new safety recommendations for which the agency

is developing a response. During that same period, PHMSA also obtained closure on all its pending Office of Inspector General and Government Accountability Office recommendations.

III. DOT's PIPELINE SAFETY ACTION PLAN

While Congress works through the reauthorization of the pipeline safety program, PHMSA is moving forward and taking a hard look at the nation's pipelines. Serious pipeline incidents have dropped by more than half over the past 20 years while all the traditional measures of risk exposure have risen – population, energy consumption, and pipeline ton-miles. The number of liquid pipeline spills with environmental consequences has also decreased over the last decade. We aim to continue the downward long-term trend.

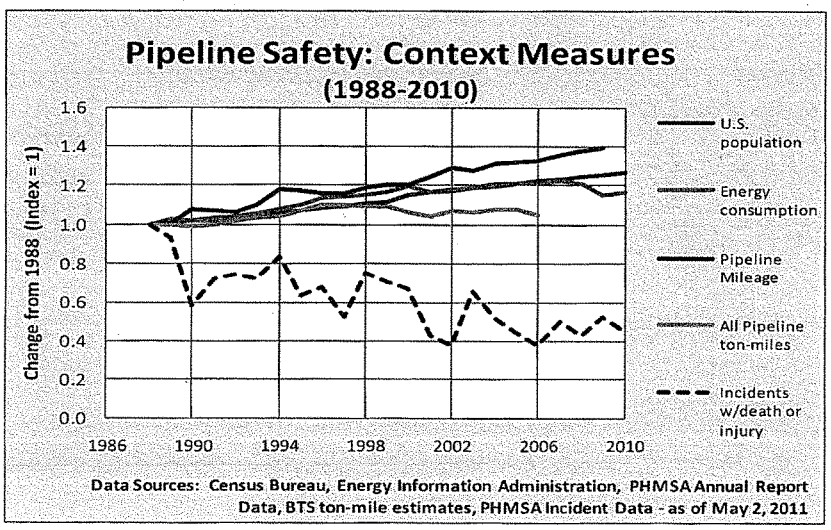

Figure 1: PHMSA Incident Data

The nation's pipeline infrastructure – like our roads, bridges, ports and rail infrastructure – needs more attention. Under Secretary LaHood's leadership, we've developed an action plan that will ensure the safety of the American people and the integrity of the pipeline infrastructure to deliver energy for future generations. The action plan includes three components:

Call to Action – We are engaging pipeline safety stakeholders in the process to proactively address the parts of the pipeline infrastructure that need attention systematically. Together, we are charting a course to accelerate the identification, repair, requalification, rehabilitation and replacement of high risk pipeline infrastructure before it becomes a risk to people or the environment.

Aggressive Efforts – Secretary LaHood and I met with pipeline executives, the Federal Energy Regulatory Commission Chairman, and the National Association of Regulatory and Utility Commissioners to discuss actions that PHMSA, States, industry and the public can take to drive more aggressive actions to raise the bar on pipeline safety and the challenges to implementing these actions. PHMSA is developing a Report to America on the Pipeline Infrastructure that draws on ideas presented by stakeholders at a public meeting hosted by PHMSA earlier this year.

Transparency – PHMSA is actively seeking input from all stakeholders and is executing this plan in a transparent manner with an opportunity for public engagement, including a dedicated website.

IV. REAUTHORIZATION PRIORITIES

PHMSA looks forward to working with Congress on the reauthorization of its pipeline safety program. Reauthorization of the pipeline safety program is a top priority of the

Department and we are pleased that the "Pipeline Infrastructure and Community Protection Act of 2011" picked-up nearly all of the provisions of the Administration's September 14, 2010 legislative proposal. While we generally support the draft bill, DOT believes that certain provisions should be modified as described below to ensure effective implementation and maximum safety benefit from available resources.

As the recent ExxonMobil incident has shown, pipeline safety requirements should be strengthened and we applaud the Committee's efforts in drafting the legislation. At the same time, it should be kept in mind that each of the new rule mandates in the bill would require the development and publication of rulemakings in compliance with the Administrative Procedure Act. Due to requirements for comprehensive regulatory evaluations it is difficult to promulgated a significant rule in less than two years, particularly when we are working on other rules simultaneously. In addition, we have two Technical Advisory Committees that are statutorily required to vote on all pipeline rulemaking we do, and part of their charge is to consider the "reasonableness" of both the cost benefit analysis and the rule itself. Many of the bill provisions will also create new mandates for State governments as well.

Increase Civil Penalties – PHMSA supports increasing administrative civil penalties for violations leading to deaths, injuries, or significant environmental damage. The maximum penalties for violations of the pipeline safety requirements have not been increased in almost 10 years. Adequate levels of penalties are necessary to achieve deterrence goals, particularly in serious cases in which violations led to injuries, fatalities, or significant environmental damage.

However, we do not support the change the bill would make to the Administration's proposal by removing incidents occurring in High Consequence Areas as among the incidents subject to the higher penalties. We believe higher administrative penalties for violations

affecting High Consequence Areas is consistent with our overall risk based regulatory approach to pipelines and is a key part of safety.

Damage Prevention Programs - We support strong pipeline damage prevention programs and the complete prohibition on States having any exemptions from their underground damage prevention "one-call" laws. However, the State's may have difficulties in immediately achieving this goal. Therefore, we suggest that Congress take a phased approach to any funding restrictions to provide some time for States to remove exemptions.

Remove Statutory Exemptions of Gathering Lines – Significant spills and incidents have occurred on gathering lines and removal of these exemptions would be consistent with PHMSA's longstanding effort to capture the remaining pipeline mileage that is currently unregulated. While the Administration proposed eliminating statutory exemptions for gathering lines, the bill only requires a review of the exemptions. We strongly believe that Congress should eliminate the statutory exemptions for gathering lines. Closing regulatory gaps was a centerpiece of the Administration's proposal. Production facilities and flow lines would remain non-jurisdictional.

Automatic and Remote Shut Off Valves - PHMSA also supports new requirements for automatic and remote shut off valves, but suggests that Congress clarify whether the bill provision applies to both gas and hazardous liquid pipelines.

Excess Flow Valves - Likewise, we support expanding the requirements for excess flow valves to portions of gas distribution systems not yet required to have them, but believe the issue of "economic feasibility" will need to be clarified and defined in statute or regulation.

Expanding Integrity Management Protection – PHMSA supports reforms to review whether pipeline safety would be improved by expanding and revising the integrity management

program requirements beyond existing high consequence areas to additional areas. As currently drafted, however, the requirement in paragraph (d) to completely eliminate regulations based on the class location classification may be premature. Congress should give DOT the discretion to eliminate any redundant regulations but leave open the possibility that some requirements based on class location could be retained if deemed necessary for safety.

Public Awareness of Pipelines - We support openness and transparency and have already undertaken extensive efforts to make pipeline safety information available to the public online. Operators use mapping information as part of their public awareness program outreach. That outreach is generally done for residents near the pipeline by mailer and sometimes door-to-door. These mailers provide the key information a resident needs to know: how to recognize an emergency, how to react safely, how to report it, and how to dig safely near one. As currently drafted, however, the national pipeline mapping system provision could present sensitive security information issues and the Transportation Security Administration should be consulted.

Pipeline Infrastructure Data Collection Authority – PHMSA supports reforms to allow the collection of additional data on physical attributes and geospatial location pipeline data on jurisdictional pipelines. Geospatially accurate pipeline infrastructure data is critical to PHMSA's and its State pipeline safety partner's ability to perform regulatory and oversight functions.

Replacement of Cast Iron Pipe - We are committed to conducting strong oversight of cast iron pipeline systems and agree with the need for a survey but note that there is currently no requirement in the law for operators of cast iron pipelines to have replacement programs.

Leak Detection Systems - We support the study on leak detection systems and requiring computational leak detection systems where technically feasible for hazardous liquid pipelines located in high consequence areas.

Reimbursement For Design Reviews/Construction Oversight – PHMSA supports reforms to seek reimbursement from project applicants for design review, consulting, and field oversight that the agency performs for new pipeline construction projects. Currently only fully operational pipelines support the costs of PHMSA oversight through user fees. These reforms would place the associated financial burden on the applicant who stands to realize the benefits from the proposed project - without distorting PHMSA's allocation of effort and expenses to pipelines already in operation.

Authority to recover costs for design reviews is an important part of maintaining the Department's capacity to conduct oversight of new pipeline projects. However, the $4 billion threshold in the bill would largely negate having this authority. Therefore, we do not support the $4 billion threshold. Based on our knowledge and understanding of the current and projected costs of pipeline projects, we believe that if any threshold is set, $500 million is the appropriate threshold. In addition, there should be restrictions on an operator's ability to circumvent this provision by breaking a project up into segments.

Special Permit Fees – PHMSA supports authority to assess filing fees for special permit applications to reimburse the agency for costs incurred to review those applications - whether for conducting technical studies or environmental analyses. The applicant who stands to benefit from the special permit project should pay for this service. We are concerned that the Bill omits the authority to collect fees from applicants for special permits or waivers of existing regulations.

While we generally support the draft proposal, we do have some concerns that we hope we can continue to discuss with committee staff. Areas of concern pertain to removal of all class location requirements; the limitation of certain special permit criteria; Oil Pollution Act violations and the need for additional enforcement authority. In particular, we oppose the use of the "knowingly and willfully" standard (used for criminal liability in 49 USC 60123) in the civil penalty section for regulatory code violations as it would potentially weaken our pipeline safety enforcement program.

CONCLUSION

In closing, we look forward to working with Congress to address any issues you may have concerning PHMSA's pipeline safety program and the regulation of gas and hazardous liquid pipelines. PHMSA very much appreciates the opportunity to report on our oversight role of these pipelines and the opportunities that exist to strengthen oversight.

Mr. SULLIVAN. Thank you, Ms. Quarterman.

I would next like to recognize Mr. Knepper. Thank you. You are next.

STATEMENT OF RANDALL S. KNEPPER

Mr. KNEPPER. Thank you. My name is Randy Knepper. I work for the New Hampshire Public Utilities Commission, and I am here on behalf of the National Association of Pipeline Safety Representatives.

For the majority of the people in the room that don't know what that organization is, we are the inspectors for the State. We have about 325 inspectors, we have about 50 program managers, and some administrative clerical help. And in laymen's terms, we are the boots on the ground. We are the field soldiers that do the inspections at the State level. So I am very appreciative of being here today to be able to talk about these things that we see firsthand.

As far as the bill, we have looked it over really quickly. And I will keep this very brief. There are four components that we talked about in our testimony. And one of them that is very dear to me is the State damage-prevention language that talks about not having any exemptions for mechanical excavation and any governmental entities.

We, as States, are—there is no Federal underground damage-prevention program. States are the ones that have them. We have differing laws in each State. But we do believe that there are some exemptions that make sense. In my own State, we allow farmers to use their own property to plant and for tilling of agricultural and seeding. We think that makes sense. The language that is in there would prevent that.

There is language just for the pipeline operators themselves that would be excused. If they were to respond to an emergency themselves to fix their own, we allow them to fix the pipe, respond to that emergency, and don't have to call the one-call, because we think you are trading one safety prerogative over another.

So there is some language in there that we think that exemptions do make sense in limited situations. And States have put that in to their own respective laws where they make sense, and so I would be very careful and mindful of that.

The second thing that we think that can be very helpful to States is the maintenance-of-effort clause that is in there. We strongly believe in maintenance of effort. States contribute almost $15 million of their ratepayers' money to handling these things, and we just think that the language should be updated from the years of 2004 through 2006 to the latest, the 2009 and 2010.

We think that is the best way to get some of the PHMSA money into the States since we are the front lines. You know, we are 75 percent of the workforce, and we inspect almost 90 percent of the Nation's pipelines. So those are the pipelines that go right up to people's homes and businesses and actually enter some of the buildings sometimes. So we are there, front and center.

We do have concerns with the language about class locations for integrity management. We think the language there, as written, should be either stricken or should be studied. We think class locations apply much more than integrity management. They apply to

design, such as valve spacing, whether that valve is 10 miles away or 2 miles away; odorization and operations, leak surveys, patrolling. Class locations is a much broader concept than just integrity management, so we do have concerns on that.

And then last, but not least, is we did want to bring up when you want to have a quicker response time for the notification centers. Being a State where I get notified all the time, at a much lower level, long before there is incidents that rise to the definitions at the Federal level—we get notified for outages of 50 customers or less, or we get notified of a single evacuation. So we are getting notified all the time.

Most States have already written into their laws a specified time period, usually about 2 hours. So, much of the time, being on the receiving end of those calls, there is not a lot of information that is available in an hour. So it is very—assessments haven't been done. There is a lot of confusion and things like that. So we would like the committee to take that in to consideration.

And I can see that my time is about up, so I will leave it at that.

[The prepared statement of Mr. Knepper follows:]

BEFORE THE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON ENERGY AND POWER
U.S. HOUSE OF REPRESENTATIVES

NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES

TESTIMONY OF

Randall S. Knepper
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
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July 15, 2011

SUMMARY OF KEY POINTS IN TESTIMONY OF RANDALL S. KNEPPER

State pipeline safety personnel represent 75 percent of the state/federal inspection workforce, and inspect 88 percent of the nation's gas and hazardous liquid pipelines. State personnel are the "face" that most municipal officials, state agencies, politicians, media entities and consumers are able to identify with and depend upon. NAPSR is the collective voice of state pipeline safety programs. Summarized below is our position on some key provisions in the draft Bill.

Section 3 - Pipeline Damage Prevention: The primary goal of our NAPSR members is to continue to enhance pipeline safety. We believe that without additional data to support this Bill's position, the potential benefits of eliminating the exemptions as proposed in this Bill will be eclipsed by the loss in safety due to the losses in funding being proposed. Rather than mandating elimination of mechanized excavation and government agency exemptions, the legislative proposal should direct the Secretary to conduct a study with assistance from the states, on the appropriateness of exemptions from participation in the One-Call process for certain activities.

Section 7 – Integrity Management: It is unclear to us that the pipeline integrity management regulations in 49 CFR Part 192 cover all aspects where pipeline class location plays a role in added safety. If the elimination of class location is desired, the DOT Secretary should be first required to conduct a thorough analysis of the existing regulations to determine the extent to which they should be amended and whether it would be consistent with safety to implement such elimination when the pipeline is covered by integrity management regulations.

Section 11 – Incident Notification: The information surrounding the incident if collected within an hour or less of discovery, may not be factual and is likely to result in confusion and misrepresentation while also causing state pipeline safety agencies to spend time and resources chasing after a large number of what could be minor events. Most NAPSR members already address incident notification and response time in their state regulations or statutes. We suggest that a rulemaking by the Secretary be instead required in the Bill to give the affected parties an opportunity to establish an appropriate notification time limit that combines timeliness with accurate and useful information.

Section 25 - Maintenance of Effort: Although NAPSR supports the language proposed in the draft Bill we are suggesting that the average of state program spending exclusive of the Federal grant contribution be instead based on the average of fiscal years 2009 and 2010.

NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES

TESTIMONY OF RANDALL S. KNEPPER

BEFORE THE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON ENERGY AND POWER
U.S. HOUSE OF REPRESENTATIVES

July 15, 2011

Introduction

Chairman Whitfield, Ranking member Rush, members of the Committee, thank you for providing us the opportunity to discuss our view of the proposed Committee draft pipeline safety bill as related to reauthorization of the pipeline safety law. This law contains necessary protections that our nation depends on to maintain safety in its energy pipeline network. I am the current Secretary of the National Association of Pipeline Safety Representatives (NAPSR). I am pleased to testify on behalf of NAPSR and in support of our member states' efforts in helping to ensure pipeline safety.

My testimony will briefly describe the role of the states in inspection and enforcement and address the concerns of NAPSR members in specific areas of the proposed draft Bill.

The Role of States in Inspection

State pipeline safety personnel represent 75 percent of the state/federal inspection workforce, with over 325 State inspectors being the "first line of defense" at the community level to promote pipeline safety, underground utility damage prevention, education, and public awareness regarding gaseous and liquid fuel pipelines. Direct state oversight provides for the greatest level of public safety because we incorporate knowledge of local conditions, considerations of local concerns, relationships with local first responders and the ability to provide direct and immediate feedback to the public. We are the "face" that most municipal officials, state agencies, politicians, media entities and consumers are able to identify with and

depend upon. Unfortunately, we too, directly experience the consequences of any accidents or incidents occurring on our nation's pipeline systems but this serves as constant reminder for vigorous oversight of non-compliant behavior and misdirected operator programs.

Under the *certification* enabled by 49 USC Chapter 601, Section 60105 a State pipeline safety program assumes oversight responsibilities with respect to the intrastate facilities over which it has jurisdiction under State law. If state jurisdiction is lacking for any class of operator, those operators are then inspected by PHMSA personnel.

State agency duties cover a wide range of activities including inspections of safety records, physical facilities, qualifications of pipeline personnel, construction, operations, maintenance, integrity management, compliance and enforcement, accident investigations, and other safety programs.

If a State no longer wishes to apply for annual certification or agreement, all inspection and compliance activities for intrastate and/ or interstate facilities revert back to PHMSA.

The majority of the states have put in place regulations that are more stringent than the Federal pipeline safety regulations. These state regulations have been developed over the years based on specific risk results derived from experience with state inspections, changing public priorities and increasing expectations of the public. State safety regulations thus inherently focus upon areas of higher risk warranting further requirements that help ensure a high level of safety. These more- stringent regulations imposed by state agencies *can only be enforced by state regulators* -- they cannot be enforced by federal regulators.

NAPSR Views on the Proposed Draft Bill

In general NAPSR believes the Draft Bill contains many improvements to pipeline safety and is in agreement with the majority of the sections. NAPSR does believe a few minor adjustments should be made that will further allow the Draft Bill to provide greater safety for our nation's growing pipeline infrastructure

These areas of concern are limited to Sections 3, 7, 11 and 25..

Section 3. Pipeline Damage Prevention

Paragraph (a)(2) proposes to withhold One-Call program grants to states that exempt *mechanized excavation, and government agencies or their contractors* from its One-Call notification systems. Similarly, paragraph (b)(3) proposes to withhold State Damage Prevention grants to states that feature the exemptions above.

The primary goal of NAPSR members is to continue to enhance pipeline safety. We believe that without additional data to support this Bill's position, the potential benefits of eliminating the exemptions as proposed in this Bill will be eclipsed by the loss in safety due to the losses in funding being proposed. While NAPSR understands the concept of providing an incentive to states to eliminate exemptions by withholding One-Call and State Damage Prevention grants, the reality is that important programs that enhance excavation damage prevention supported though these grants may have to be discontinued because the state statute contains minor exemptions that do not adversely affect safety.

NAPSR members are *the authority* for specific underground damage prevention programs since many of our members directly oversee, participate and enforce the state damage prevention laws and rules. We believe the term "mechanized excavation" is too far reaching and may lead to unintended consequences. To further illustrate the point, we address the reference to "*mechanized excavation*" in the Bill. Besides ordinary excavation for whatever purpose, this includes excavation such as the tilling of soil for agricultural purposes, daily excavation for sand pits, rock quarries, or landfill purposes, and includes excavations during emergencies involving the very pipelines we are trying to protect. We single these out because they involve some of the most common minor exemptions justified in many states. The following are examples of unintended consequences that may arise:

- Tilling of soil for agricultural or seeding purposes is a normal use of the land, often done several times each year. Other pipeline safety regulations require pipeline markers in the field to show the farmer where the buried line is in most circumstances. When planting or seeding season arrives in the vast agricultural areas throughout the country, and in the absence of an exemption, the workload associated with excavation notices to the One-Call centers and the marking of the lines would skyrocket, overwhelming One-Call organizations an infrastructure locators with requests to mark large areas in a very short time frame (48 to 72 hours).

- Excavation for mining, purposes usually involves a mining permit which specifies a number of conditions including protection of buried infrastructure lines known to the permitting agency. As a consequence, there is no need to require notice to the One-Call center and the marking of the facilities whose location is already known before excavating. Likewise excavation in sandpits and rock quarries is a daily operation that occurs to supply nearly every infrastructure replacement and new installation in America, every neighborhood development, street and bridge reconstruction as older inferior soil materials are replaced with screened materials conforming to specified size and properties. Requiring those operators to call One-Call notifications centers provides little safety benefit.

- In an emergency, such as when a hazardous leak occurs in an underground gas pipeline, the pipeline operator may not have the time to wait for a One-Call center to arrange for a "locate-and-mark" operation. Following special precautions already known to the pipeline operator, the pipeline must be excavated and the leak repaired as soon a possible.

Many states have studied these issues extensively and have developed special provisions to deal with problem areas. NAPSR thus believes that further gathering of facts and data is necessary to determine if any of the current exemptions are not justified and what adjustments must be made.

NAPSR firmly believes the elimination of all and government agency exemptions as a condition of eligibility for One-Call and State Damage Prevention grants will be counterproductive - doing more harm than good.

First, the grant funds, when doled out among the states, are not of sufficient level to provide an incentive to a state to attempt to force a one size fit all solution to the multitude of excavation scenarios. Eliminating these funds will result in less effort by the state in promoting use of the 811 number, in educating locators and excavators and in carrying out other educational efforts with the affected stakeholders to reduce excavation damage to pipelines and other infrastructure. This could actually increase the number of incidents involving excavation damage and result in lower overall levels of safety.

Second, in some states, the One-Call grant is used to fund enforcement efforts. These states may have exemptions for some government agency activities; the resulting ineligibility for One-Call grants would detract from enforcement and thus lower the level of pipeline safety.

Third, some exemptions may pose little if any threat to pipelines. Challenging them would be to spend state political effort for little benefit. It would make more sense to compile data on whether certain types of exemptions have an impact on the overall number dig-ins or pose a material threat to pipelines, and to concentrate on those areas where problems are identified.

Rather than mandating elimination of mechanized excavation and all government agency exemptions, the legislative proposal should direct the Secretary to conduct a study with assistance from the states, on the appropriateness of exemptions from participation in the One-Call process for certain activities, including those by municipalities, (e.g. resurfacing streets), state agencies (e.g. or building roads and highways), or their contractors.

If any changes are warranted to One Call language, NAPSR believes Section 27 (c) (1) should read as:(1) by striking "under section 6106 $1,000,000 for each of fiscal years 2007 through 2010" in subsection (a) and inserting " under section 6016 $2,000,000 for each fiscal years 2011 through 2014"

Section 7. Integrity Management

NAPSR is concerned that the language under paragraph (c) of the Bill is not as explicit as it could be if it is meant to only apply to Integrity Management Evaluation. Many of our members interpret the proposed language to have broader impacts outside of the Integrity Management regulation in the federal pipeline safety code.

Notwithstanding the factors proposed under paragraph (c) of the Bill, NAPSR members believe the class location regulations in 49 CFR Part 192 serve multiple purposes, including but not limited to the determination of risks in high-consequence areas, the design, operation and post-construction testing of pipelines. By considering factors like these, we are hard-pressed to believe that the class location regulations are redundant with the gas transmission pipeline integrity management regulations for pipelines in high consequence areas in every aspect of pipeline safety. The concept of class location is used as a tool for mandating minimum operating and maintenance practices which take the consequences of a leak or rupture into account. It is unclear to us that the pipeline integrity management regulations cover all

aspects where pipeline class location plays a role in added safety. We are thus compelled to suggest that if the elimination of class location is desired, the DOT Secretary should first be required to conduct a thorough analysis of the existing regulations to determine the extent to which they should be amended and whether it would be consistent with safety to implement such elimination when the pipeline is covered by integrity management regulations. The time interval for such an analysis should be fixed.

Section 11. Incident Notification

The definition of "Immediate Telephonic Notice" proposed in the draft Bill includes a one-hour maximum time limit for notifying the National Response Center following the time of discovery of a qualifying release of gas or hazardous liquid. Based on NAPSR's past experience we believe the one-hour time limit to be unrealistic. Often, the emergency responder claiming sole jurisdiction over the on-going incident will not release any information or allow anyone else to enter the affected premises. Therefore, in instances where a discovery is made by other than the facility operator, for a while after discovery, it is not even known if a regulated facility or a regulated product is involved. Thus the information surrounding the incident may not be factual and is likely to result in confusion and misrepresentation while also causing state pipeline safety agencies to spend scarce resources chasing after a large number of what could be insignificant or minor events. There are hundreds of thousands of structure fires a year in the nation – most of which are not related to gas or hazardous liquid facilities; yet many might have to be investigated by the state pipeline safety agency because of the one-hour time limit on notification.

Most NAPSR members already address incident notification and response time in their state regulations or statutes. They recognize the priority of operator response to address the incident over all other actions. We thus suggest that a rulemaking by the Secretary be instead required in the Bill to give the affected parties an opportunity to establish an appropriate notification time limit that combines timeliness with accurate and useful information.

Section 25. Maintenance of Effort

NAPSR supports the language proposed in the draft Bill except for the portion that specifies the "remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent for gas and hazardous liquid safety programs for fiscal years 2004 through

2006,...". We are suggesting instead that the average amount be based on two years, namely 2009 and 2010.

Like you, we understand the importance of our mission to the safety of our citizens, energy reliability and continued economic growth of our Nation.

On behalf of NAPSR, I thank you for the opportunity to submit these comments to the Subcommittee.

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Mr. SULLIVAN. Thank you for your comments.

Now we will move in to questions. I recognize myself for a question.

To Ms. Quarterman, the discussion draft proposes that the automatic and remote-controlled shutoff valves be mandated for pipelines that are constructed or entirely replaced.

One of the witnesses on the next panel testifies that these valves should be placed in all high-consequence areas. Does PHMSA have a sense of what this sort of retrofitting would cost? And if so—even if it is feasible.

Ms. QUARTERMAN. We have not done an economic evaluation of how much that would cost. I would say that we are—last year, we put out an advance notice of proposed rulemaking for hazardous liquids where we asked the question about where it would be appropriate to put these kinds of valves. We have plans to do similar rulemaking on the transmission side.

In the short term, I think we are planning to have a workshop later on this year or early next year to begin to flesh out issues with respect to replacement or placement of those valves, but at this point we don't have that data.

Mr. SULLIVAN. Do you do cost-benefit analysis on these regulations?

Ms. QUARTERMAN. Oh, absolutely. It is mandatory.

Mr. SULLIVAN. OK.

Also, Ms. Quarterman, I have anotherquestion. The discussion draft requires a study on leak-detection systems and requiring leak-detection systems for hazardous-liquid pipelines located in high-consequence areas.

One of the witnesses on the next panel commented in his testimony that we should set a standard now for what the minimum leak-detection capabilities under various circumstances should be. Does PHMSA have the information it needs to do that for now? Or would it make more sense to study technical capabilities first?

Ms. QUARTERMAN. At the same time that we are looking at the placement of valves, we are considering the question of leak detection and where it is appropriate.

Again, that was also included in the advance notice of proposed rulemaking that went out on hazardous liquids. So that is something that will be a part of this technical working group that we are planning for shortly.

Mr. SULLIVAN. And I have one more question. Regarding your concerns on gathering-line exemptions, what significant spills and incidents related to gathering lines can you share with us? Can you describe to us what regulations are already in place for gathering lines?

Ms. QUARTERMAN. I will get you a list of significant spills or incidents. Just off the top of my head, there was, in 2009 or 2010, an incident in Oklahoma involving a gathering gas line that was 20 inches, about, where I believe 3 people were killed. So these lines do have or have the potential to have significant consequences.

We would like to be able to gather data about incidents on these lines, since they are currently not regulated, and be in a position to determine what regulation is appropriate.

Mr. SULLIVAN. Thank you.

Mr. Knepper, the bill would link removal of damage-prevention exemptions to the Federal grant dollars. After more than a decade of incentivizing States to improve these important safety programs, why shouldn't we be holding States to the highest standards when Federal grant dollars are involved? These accidental dig-ins are, after all, the leading cause of death and injury associated with pipelines; is that right?

Mr. KNEPPER. I believe accidental—I believe you are very correct. We are not asking for that. What we are asking for is to make sure that the language isn't too far-reaching and broad.

As a person in my own State, I investigate every single dig-in that occurs, 400 in my State a year. Every Thursday, I meet with every excavator and every operator. So I know firsthand what the reasoning is. I do not wish to hide behind the fact that there are exemptions and things. I know which exemptions make sense and which don't. I just think that putting this into the bill and doing it by giving through the grant process will not accomplish that goal at all.

In fact, first of all, it might be contrary. If I am not allowed to use and apply for a one-call grant because I have a minor exemption for someone digging in a sandpit or a quarry, where it doesn't make sense and we have never had that, I can no longer apply for that grant, I can't use that grant for public education purposes and promoting dig safety.

So I do feel that the language there is too far-reaching and that the States should be consulted first about how that works. There is not a scintilla of evidence in my State where that makes sense. I am the only one that has that data. It is not available on a national basis. So you would have to go on a State-by-State basis to see where that works.

Mr. SULLIVAN. Well, you are critical of the incident notification section because it would lead to too many false alarms. However, since the rules will be subjected to a process of regulation, won't such a possibility be taken in to account? Won't public input and comment allow PHMSA to prevent issuing a rule that allows something like a customer-suspected gas leak to count as a moment of discovery?

Mr. KNEPPER. I believe that we are only critical in the fact that we just wanted to be aware of it. It will raise up a lot more false alarms that occur out there. It is the same resources that are applying. It is people like myself. After this hearing tonight, when I go back, I am on call tonight. So I will be getting that 3:00 a.m. Call that happens. So we just want to be wary of the implications of that.

I am not opposed to—I would rather much more focus on the quality of the information that comes in within that first hour, versus focusing on whether it is a 1- or 2-hour notification.

Mr. SULLIVAN. Thank you very much.

And I would like to recognize Ranking Member Rush for questions.

Mr. RUSH. Thank you, Mr. Chairman.

Ms. Quarterman, it is good to see you again. Thank you for once again appearing before this subcommittee. You seem to be a reg-

ular witness here. And we certainly appreciate your testimony and your input.

Congresswoman Speier, in her testimony, was quite critical of the relationship between industry, agency, or regulators. Can you respond to that general criticism?

Ms. QUARTERMAN. Thank you, Ranking Member Rush.

Yes, I would, because our agency has close to 500 people, of which about 200 or so are in the pipeline safety program. And we have heard this criticism in the past, and it is something I came in the door having heard. And having spent time with the employees within the agency, I know that, you know, they may have some concerns about upper-level leadership, but in terms of their commitment to the mission, it is the highest, number-one thing on their mind.

I removed all doubt of any concerns about that when I have been to the field and visited with our inspectors there. To a person, their concern is safety and safety of the public. When they have the obligation to go out and visit a site like the one in San Bruno, which I got to see, which was absolutely devastating, the inspectors who were out there said it was the worst scene that they had seen in their career. It is impossible not to be affected by that and not to put the safety of the public foremost in their mind.

I mean, I think to a certain extent it is a creature of the time and that people are, by definition, concerned about their public officials, their government, and forget the kind of commitment these folks have, working 24/7 to respond to these issues.

Mr. RUSH. Right.

What percentage of America's pipelines, do you know or can you estimate, are grandfathered into the law that is up for reauthorization? And the second part is, should we maintain that grandfathered status in the reauthorization, or should we eliminate it?

Ms. QUARTERMAN. I don't have a percentage. That is a number that we are trying to ascertain ourselves. We are, as I mentioned earlier, in the process of doing an advance notice of proposed rulemaking on gas transmission pipelines. One of the things that I think you will see there are questions about precisely this provision. It was put in to effect many years ago and affected very old pipe then, and it has continued forward.

The grandfathering, I think the notion was at some point the grandfather would pass away and we would move forward with a safety program. We need to know exactly how many pipelines we are talking about there, how much it would cost to get those pipelines hydro-tested or otherwise inspected or replaced. But that is something that is top of our agenda.

Mr. RUSH. Do you have enough inspectors on the ground, enough boots on the ground, or should we be trying to include additional dollars for more boots on ground?

Ms. QUARTERMAN. The administration's proposal in 2010 would ask for 10 additional inspectors per year for the 5 years of the reauthorization, so 10 new ones every year.

Our biggest challenge is actually hiring people, in that we don't have direct hire authority and there is a lot of competition for engineers. They are all engineers.

Mr. RUSH. Thank you, Mr. Chairman. I yield back.

Mr. SULLIVAN. Thank you, Mr. Rush.

And I would like to turn to our chairman, Fred Upton, for questions.

Mr. UPTON. Well, thank you. And in the interest of time, knowing that we are going to have votes soon, I will try not to use all my 5 minutes.

Ms. Quarterman, what are the current regulations regarding the burial of pipelines under waterways? It is my understanding that it is a minimum of four feet. Is that true?

Ms. QUARTERMAN. With respect to pipelines that are in a stream that is greater than 100 feet wide, the minimum requirement is 48 inches unless there is rock to be blasted through, in which it is an 18-inch requirement for hazardous-liquids pipelines.

Mr. UPTON. And that is in more than 100 feet wide. Is that just at that particular point? Does it look at the flood stage status? I mean, as I have talked to Congressman Rehberg and the folks at Exxon, I knew that that area was flooded just like my area in Talmadge Creek was flooded when we had that burst last year.

Ms. QUARTERMAN. It doesn't specifically address flood stages. However, for example, in the Montana spill, it was an area that was in a high-consequence area, and there are other rules that would apply. When you design a pipeline, you have to also ensure that it is capable of withstanding certain stresses and external loads.

And since it is in a high-consequence area, it would be subject to the Integrity Management Program requirements, which are continual requirements upon the operator to ensure that all local conditions, including climatic, like flooding, are taken in to account.

Mr. UPTON. OK. And it is my understanding that that was because of—that standard was designed by a 1970s ASME standard.

As we look to the future, will the ExxonMobil pipeline be rebuilt? As it is rebuilt, will it use those same traditional excavation techniques? And as I understood it, as I talked to Exxon immediately afterwards, that they did excavate and then lay the pipe down. Do you know what type of replacement will be used when that pipeline is reopened?

Ms. QUARTERMAN. We issued a corrective action order on July the 5th requiring that they replace that pipeline using horizontal drilling technology, which would put the pipeline substantially below the riverbed.

Mr. UPTON. "Substantially below" being how far? Ten feet below? Twenty feet below?

Ms. QUARTERMAN. We have not yet received a plan from Exxon as to where they would like to put that pipeline. I read someplace that they were talking about 30 feet, but we have not received that plan yet.

Mr. UPTON. OK. Question: Do you know what percentage of pipelines across the country are remote versus manual in terms of close-off valves?

Ms. QUARTERMAN. We don't have that data, no.

Mr. UPTON. Do you have any idea?

Ms. QUARTERMAN. No, I don't.

Mr. UPTON. Back-of-the-envelope?

Ms. QUARTERMAN. No, I don't.

Mr. UPTON. Forty percent? Twenty percent? Eighty percent?

Ms. QUARTERMAN. I don't have any idea.

Mr. UPTON. Is there any way to get that information?

Ms. QUARTERMAN. We would have to survey the operators. We don't maintain that kind of data.

Mr. UPTON. The last question, Mr. Knepper, because the bells have run for votes. It is our understanding that ExxonMobil did not meet the 1-hour deadline for requirement for reporting. As you deal with your other PUC commissioners, what are your thoughts as to what it should be?

Mr. KNEPPER. Well, I mean, for our own State, you know, where the Federal leaves it kind of up to discretion, we specify in our State, you know. Response times have to be within 30 minutes, 45 minutes, and 60 minutes.

I would not expect the Federal Government to have across-the-board response times. It is all dependant upon the landscape and what the expectations are of that public in which you are serving. So we have determined in our State what it is. And many other States have gone to that same type of thing; they determine what the specifics are.

So I think that is the best approach, and it is implemented.

Mr. UPTON. OK.

Let me just finish up, Ms. Quarterman, by saying that, as you are looking at pipelines as they go underneath streams and riverbeds, if you would work with our staff, because we are going to be looking to add this piece, I think, to our discussion draft, in terms of a minimum of what should be. If you could share with us what you think the fair standard ought to be, and, obviously, feasible, we would certainly appreciate that.

Ms. QUARTERMAN. Absolutely.

And I would add on your last question about shutoff valves that one of the provisions in the legislation that we put forward, and I believe here, relates to data and the ability to collect some of this data that you are asking about.

Mr. UPTON. I yield back.

Mr. SULLIVAN. Congresswoman Castor for 5 minutes.

Ms. CASTOR. Thank you very much, Mr. Chairman.

And thank you to the witnesses for your testimony and insight.

One of the most important developments in the regulation of pipelines during the last decades has been implementation of integrity management programs. Under these programs, pipeline operators are required to continually evaluate the threats to each pipeline segment's integrity and the consequences of a failure. Inspections are required and operators must take prompt action to repair any defects that could reduce a pipeline's integrity. Since 2001, over 34,000 defects have been detected and repaired.

But under current law, these programs only apply in so-called "high-consequence areas" with high populations or sensitive environments. That means that these programs only apply to 44 percent of hazardous-liquid pipelines and 7 percent of natural gas transmission pipelines.

Are those numbers correct, Administrator Quarterman?

Ms. QUARTERMAN. I believe they are.

Ms. CASTOR. OK. An important priority for safety advocates has been to expand the miles of pipeline covered by integrity management programs. There is a separate set of requirements called "class location requirements" that protect areas with high population densities in a variety of ways.

Industry has argued that these two sets of requirements are redundant. The Senate bill would require PHMSA to evaluate whether integrity management programs should be expanded beyond high-consequence areas and whether class location requirements would no longer be needed. Then the agency would issue the appropriate regulations based upon the evaluation.

The discussion draft takes a different approach. It includes the evaluation of whether integrity management programs should be expanded beyond the high-consequence areas, but it wouldn't allow the agency to act on this evaluation. At the same time, the draft requires the agency to roll back the class location requirements.

Mr. Knepper, the discussion draft approach seems to be on balance. Do the State regulators think it is a good idea to require PHMSA to eliminate class location requirements for pipelines that are subject to integrity management?

Mr. KNEPPER. No, we don't.

Ms. CASTOR. Why not?

Mr. KNEPPER. Because we think class locations goes beyond integrity management. It goes into the initial design of it. So integrity management, like you said, only applies to a certain percentage, those in Class 3, Class 4 locations, high population centers. But class location also goes in to—it affects operations, such as odorization. It affects maintenance about how often things are leak-surveyed. It affects the patrolling of pipelines, things outside of the integrity management section.

So we think eliminating that, I would not even use the term that it is "redundant," would be a problem.

Ms. CASTOR. Administrator Quarterman, what do you think, are these two sets of requirements redundant? Or do you agree with Mr. Knepper, should we roll back the class location requirements without further study?

Ms. QUARTERMAN. I agree with Mr. Knepper.

Ms. CASTOR. OK.

Mr. Chairman, I think this is an area where the discussion draft needs to be improved. This provision I think is weakening safety protections, when it should be expanding and strengthening them.

I now yield back the remainder of my time.

Mr. SULLIVAN. Thank you, Ms. Castor.

Next, I would like to recognize Representative Lee Terry from Nebraska.

Mr. TERRY. Thank you.

Yes, Ms. Quarterman, I am a little confused on your last comment. Just regarding integrity management, can you describe what your position is on how integrity management programs and class location requirements are not redundant? When issuing integrity management rules, didn't PHMSA draw the conclusion that IMP makes class location rules obsolete?

Ms. QUARTERMAN. I don't know what the original rulemaking said, but the position that we have taken in our draft and in the

Senate bill would require us to do a study that takes some consideration of this issue. And I think that is the appropriate course. I don't think it is appropriate just to eliminate——

Mr. TERRY. To do a study of what, specifically?

Ms. QUARTERMAN [continuing]. How to deal with class locations, whether or not to——

Mr. TERRY. Should it be fully Federal or have a mixture of State?

Ms. QUARTERMAN. I am not following, I am sorry.

Mr. TERRY. OK. Go ahead. How much time do you think a study would take? And would that delay our ability to pass a comprehensive pipeline safety bill?

Ms. QUARTERMAN. No, I believe the approach that is in the Senate bill would permit us to do a study and proceed as appropriate following that.

Mr. TERRY. OK.

In regard to detection, we have had discussion about older pipelines, newer pipelines. It seems to me that the technology that is being used, in the type of electronic equipment that can monitor, inspect, do you feel that the bills properly address increasing the level of inspections and they could be for both older and newer? What are your recommendations?

Ms. QUARTERMAN. I recommend that we proceed apace to continue to look at the question of leak detection. I mean, for me, in the past year, noticing the number of incidents, I have been concerned that large spills occurred before anyone knew what was happening.

And I think it is an appropriate time for us to take a closer look in terms of making the requirements more prescriptive than they currently are. Right now, they are, in the integrity management program, more a question of people deciding what to do. Maybe we need to set some standards here.

Mr. TERRY. In regard to setting standards, Mr. Knepper, does that impact the States? You mentioned in your testimony that you think the States are in a better position because you have knowledge of what a reasonable time to shut off or inspect—or, not to inspect, but if there is a problem, once it is detected, to actually resolve.

Mr. KNEPPER. We just have to be careful about which segment of the Nation's pipelines and infrastructure we are talking about. The vast majority of transmission lines are inspected by the Federal Government, not the State, although the State does a big portion. So I would say that, when I was gauging and talking about emergency response times, that was more for distribution-type—the vast majority of pipelines that are out there.

I think your question has to do with the transmission lines and what we feel about that. I guess I think that, here is an area where a lot of States will defer to the Federal Government for some of the things because they are the inspection force that is out there most often looking at those. We do that, although it is a small percentage of the amount of pipelines that we look at. So I would——

Mr. TERRY. Well, let me just interrupt.

Thirty seconds, Honorable Quarterman. Should we put something in this bill that says, on detection, after detection, you have

1 hour to respond? Thirty minutes to respond? Is there something like that that would be appropriate?

Ms. QUARTERMAN. I may have misinterpreted your last question. I thought we were talking about leak-detection systems.

In terms of the timing, we currently, on a Federal level, have an advisory bulletin that says between 1 and 2 hours people should notify after something happens, they should notify the National Response Center.

Mr. TERRY. And if they don't, a fine?

Ms. QUARTERMAN. A potential fine if it is not reasonable.

Mr. TERRY. OK. That is all. I yield back.

Mr. SULLIVAN. Thank you, Mr. Terry.

I would like to thank the witnesses.

And we stand adjourned.

[Whereupon, at 10:51 a.m., the subcommittee was adjourned.]

THE AMERICAN ENERGY INITIATIVE, PART 11: THE PIPELINE INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF 2011

THURSDAY, JULY 21, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:17 a.m., in room 2322, Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Present: Representatives Whitfield, Sullivan, Terry, Burgess, Bilbray, Scalise, Olson, Gardner, Pompeo, Griffith, Upton (ex officio), Rush, Dingell, Green, Gonzalez, and Waxman (ex officio).

Staff present: Gary Andres, Staff Director; Charlotte Baker, Press Secretary; Michael Beckerman, Deputy Staff Director; Maryam Brown, Chief Counsel, Energy and Power; Andy Duberstein, Special Assistant to Chairman Upton; Garrett Golding, Professional Staff Member, Energy; Cory Hicks, Policy Coordinator, Energy and Power; Katie Novaria, Legislative Clerk; Jeff Baran, Minority Senior Counsel; and Caitlin Haberman, Minority Policy Analyst.

Mr. WHITFIELD. I will now call the hearing to order.

As you know, this is a hearing regarding the discussion draft, the Pipeline Infrastructure and Community Protection Act of 2011. We had to interrupt the hearing the last time. We had heard from two panels of witnesses. So, today, we are going to hear from the last panel of witnesses; and we do appreciate you all taking time to come back and offer us your thoughts on this discussion draft.

On the third panel today we have Mr. Andrew Black, who is the president of the Association of Oil Pipe Lines; and he is also testifying on behalf of the American Petroleum Institute.

We have Mr. Daniel Martin, who is senior vice president, pipeline safety, El Paso Pipeline Group; and he is also testifying on behalf of the Interstate Natural Gas Association of America.

We have Mr. Rick Kessler, who is the—I don't know if he is the executive director or not, but he is here testifying on behalf of the Pipeline Safety Trust.

Mr. KESSLER. Vice president.

Mr. WHITFIELD. Vice president. Thank you.

Then we have Mr. Charles Dippo, who is vice president, Engineering Services and System Integrity, for South Jersey Gas Company and also on behalf of the American Gas Association.

Then we have Mr. Gary Pruessing, who is the president of ExxonMobil Pipeline Company.

Once again, welcome. Thank you for being here. We look forward to your testimony. Each one of you will be given 5 minutes for your testimony.

Mr. Black, we will begin with you. You are recognized for 5 minutes.

STATEMENTS OF ANDREW J. BLACK, PRESIDENT, ASSOCIATION OF OIL PIPE LINES, ON BEHALF OF THE AMERICAN PETROLEUM INSTITUTE; DANIEL B. MARTIN, SENIOR VICE PRESIDENT, PIPELINE SAFETY, EL PASO PIPELINE GROUP, ON BEHALF OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA; ERIC KESSLER, VICE PRESIDENT, PIPELINE SAFETY TRUST; CHARLES F. DIPPO, VICE PRESIDENT, ENGINEERING SERVICES AND SYSTEM INTEGRITY, SOUTH JERSEY GAS COMPANY, ON BEHALF OF THE AMERICAN GAS ASSOCIATION; AND GARY PRUESSING, PRESIDENT, EXXONMOBIL PIPELINE COMPANY

STATEMENT OF ANDREW J. BLACK

Mr. BLACK. Good morning. Thank you, Chairman Whitfield. I appreciate the opportunity to appear on behalf of AOPL and API.

Advancing the cause of pipeline safety is a goal we all share. The subcommittee discussion draft would improve pipeline safety by building on the good work in S. 275, the pipeline safety reauthorization bill approved by the Senate Commerce Committee on a bipartisan basis. We hope S. 275 will be approved by the full Senate soon, although there are changes we seek to it before it were to become law.

The draft before this committee today is an improvement over S. 275 in certain areas. My written testimony makes certain suggestions on how the draft can be improved further.

I specifically want to commend the draft bill's provisions regarding damage prevention. Excavation damage is the leading cause of pipeline accidents that kill or injure people. Eliminating exemptions to one-call programs that require an excavator to call 811 before digging, as the draft would do, is a meaningful pipeline safety enhancement. This section will save lives, reduce injuries, and protect the environment.

The draft wisely delegates many technical and engineering risk management decisions to PHMSA. Proper pipeline regulation involves a technical engineering analysis of risks and potential solutions. I encourage the committee to avoid presuming new regulations are necessary unless there is evidence that the current regulatory framework has failed. In many cases, the draft properly avoids presuming such failures in advance of study.

We support the draft's provisions concerning operator incident notification procedures to the National Response Center and revising PHMSA enforcement processes.

The draft also requires several studies we do not oppose, including on leak detection technologies. The last time leak detection was studied, just 3 years ago, PHMSA did not conclude that this complex issue was in need of a rulemaking. Leak detection is a com-

bination of technologies, practices, and systems, often customized, sometimes proprietary, and not one off-the-shelf technology. While we all want leak detection to improve, priority should be placed on improving the technology and capability to match increasing expectations.

Our members contribute to research on leak detection and do not believe Congress should require a rulemaking before knowing what the study will conclude. We recommend the committee delete the requirement for a rulemaking in the draft but keep the study.

We fully support timely and accurate reporting of pipeline incidents, but we want to make sure replacing the current reporting standards with a hard deadline does not create the potential for more false-alarm notifications just to achieve compliance with the deadline. False-alarm notifications cause unnecessary deployments of first responders and an unwarranted expenditure of resources and manpower by government. We encourage the committee to discuss this issue with PHMSA and State regulators. You may find the revisions to the reporting procedures in the draft by themselves facilitate more prompt notification of pipeline incidents.

A lot of attention now is being given to the pipeline incident in Montana earlier this month. Once the root cause of an accident is determined, we can identify the proper responses, both technical and regulatory. Any premature regulatory changes not based on the investigation and understanding of the underlying cause of an accident could distract regulators and the industry from addressing the real cause of the incident. Basing pipeline regulation on solid information will help achieve our shared objective of minimizing pipeline accidents. Nobody wants to avoid pipeline failures more than we do.

The safety performance of the liquid pipeline industry has improved over the past decade but can always improve further toward the goal of zero accidents. Our associations and our members work hard to prevent pipeline accidents and identify and implement lessons that can be learned from them.

Each of the major causes of pipeline failures decreased over the last 10 years, reflecting the success of several different strategies to manage risks. The major causes of pipeline failures are already addressed by a thorough set of Federal and State regulations, including internal corrosion, external corrosion, materials and equipment failures, and operations errors. Also, PHMSA is an aggressive regulator, unafraid to use its many tough inspection and enforcement tools.

We welcome the opportunity to work with members of the committee and other stakeholders, including the Pipeline Safety Trust, on legislation to further improve pipeline safety. The discussion draft is a good start.

Thank you.

[The prepared statement of Mr. Black follows:]

Testimony of
Andrew J. Black
on Behalf of the
Association of Oil Pipe Lines (AOPL) and the American Petroleum Institute (API)

Legislative Hearing Before the House Committee on Energy and Commerce
Subcommittee on Energy and Power

July 15, 2011

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Summary of Testimony

The Association of Oil Pipe Lines (AOPL) and the American Petroleum Institute (API) appreciate the opportunity to share our views on the Committee's draft reauthorization proposal. The liquids pipeline industry regrets *any* pipeline leaks and works hard to prevent them, while providing reliable, economical service to consumers of petroleum products across the nation. Pipelines remain the safest way to transport oil and gas from the wellhead to market.

Pipelines carrying crude oil and refined petroleum products are governed by a thorough set of federal and state safety regulations. The major causes of pipeline failures, including internal and external corrosion, materials and equipment failures, operations errors, and excavation damage, are all addressed by existing regulations.

In the event of a pipeline accident, determining the root cause is required in order to identify lessons the operator and the industry can implement. In the case of pipeline safety regulation, an accident's root cause must be known before determining if regulations need changing. Wise pipeline regulation involves a technical engineering analysis of risks and potential solutions. Basing pipeline regulation on solid information will help achieve the objective of minimizing pipeline accidents.

The Subcommittee Discussion Draft builds upon the good work in S.275. AOPL and API believe the Draft would advance the cause of pipeline safety and should be adopted with the changes noted in our testimony. We applaud the decision to delegate many technical and engineering risk management decisions to PHMSA.

Our testimony on the Draft addresses, among other provisions, the following:

- Damage Prevention Programs – We *support* Section 3, which would help prevent damage caused by excavation, the leading cause of serious accidents.
- Administrative Enforcement Processes – We *support* Section 26, which would help ensure impartiality in the PHMSA enforcement process.
- Gathering lines – We *do not oppose* Section 4 and consider it an improvement over S. 275, because it requires a study, not a rulemaking, on a regulatory framework that has not failed.
- Leak detection – We *do not oppose* the requirement in Section 10 for a study of important technology limitation issues, but we are concerned with the Draft's provision that pre-judges the outcome of the study by requiring a PHMSA rulemaking regardless of the study.

Introduction

I am Andy Black, President and CEO of the Association of Oil Pipe Lines (AOPL). I appreciate this opportunity to appear before the subcommittee today on behalf of AOPL and the American Petroleum Institute (API).

AOPL is an incorporated trade association representing 49 liquid pipeline transmission companies. The American Petroleum Institute (API) represents more than 470 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.2 million U.S. jobs, accounts for 7.7 percent of the U.S. economy, and delivers more than $85 million a day in revenue to the U.S. Treasury. Together, our organizations represent the operators of approximately 90 percent of total U.S. oil pipeline mileage in the United States.

I appreciate the opportunity to share our views on the Committee's draft reauthorization proposal, the "Pipeline Infrastructure and Community Protection Act of 2011."

Pipeline safety and regulation

The liquids pipeline industry regrets *any* pipeline leaks and works hard to prevent them, while providing reliable, economical service to consumers of petroleum products across the nation. Pipelines are the safest way to transport oil and gas from the wellhead to market.

Pipelines carrying crude oil and refined petroleum products are governed by a thorough set of federal safety regulations and state laws. The major causes of pipeline failures, including internal corrosion, external corrosion, materials and equipment failures, operations errors, and excavation damage, are all addressed by existing regulations.

In the event of a pipeline accident, determining the root cause is required in order to identify lessons the operator and the industry can learn from and implement. In the case of pipeline safety regulation, an accident's root cause must be known before determining if regulations need changing. Wise pipeline regulation involves a technical engineering analysis of risks and potential solutions. Any changes advocated prematurely could distract regulators and the industry from addressing the real cause of an incident.

AOPL and API maintain ongoing processes to share information about pipeline incidents once the root cause is understood and to develop best practices on safety that can be deployed throughout our industry.

The frequency and volume of pipeline releases have decreased markedly over the past decade. The industry is proud of its record of improvement, but continues to strive for zero releases, zero injuries, zero fatalities and no operational interruptions. Pipeline operators have every incentive to avoid accidents and work

hard to prevent them. Basing pipeline regulation on solid information will help achieve our shared objective of minimizing pipeline accidents.

Comments on Subcommittee Discussion Draft

The Subcommittee Discussion Draft ("Draft") builds upon the good work in S.275, the "Pipeline Transportation Safety Improvement Act." S. 275 was approved by the Senate Committee on Commerce, Science, and Transportation by voice vote on May 5, 2011. AOPL and API believe S. 275 was a constructive start to the reauthorization process in Congress.

The Draft addresses many of our concerns with S. 275 in a thoughtful and workable fashion. We believe the Draft would advance the important cause of pipeline safety. We encourage the Committee to adopt it or a similar proposal. Below we note both provisions of the legislation that are particularly important and suggested changes.

1. Improving Damage Prevention Programs – AOPL and API *support* Section 3, which would require PHMSA to remove all exemptions for mechanized excavators from complying with the 811 "national call before you dig" requirements, also known as "One-Call." While third-party damage (typically from mechanized excavation) accounts for only a small number of releases from liquid pipelines, failing to "call before you dig" can have very serious

consequences -- it is the leading cause of pipeline accidents which kill or injure people. Section 3 would go a long way to protecting the public. Exemptions from One-Call requirements create an unnecessary gap in pipeline safety. S. 275 removes exemptions for municipalities, States, and their contractors. We urge Congress, the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the States to remove additional exemptions for all mechanized excavators as this Draft would do.

2. Administrative Enforcement Processes – AOPL and API *support* Section 26, which would ensure that pipeline operators are afforded basic legal protections found at other federal agencies during PHMSA enforcement proceedings. The section mirrors provisions in S. 275 by requiring hearings to be conducted by a Presiding Official who is not involved in investigations and enforcement, and allowing a person that requests a hearing the opportunity to arrange for a transcript.

The Draft improves upon S. 275 by adding two important components that are consistent with basic tenets of due process and transparency in agency proceedings. First, it requires a separation of functions between the investigative/prosecutorial staff and decisional staff advising the Secretary on enforcement matters. We believe this important firewall is necessary to ensure impartiality in agency proceedings, and it is a common practice found

throughout other federal agencies, such as the Federal Energy Regulatory Commission. It is also consistent with the Administrative Procedures Act. We also support the additional provision providing pipeline operators the opportunity for a timely hearing to contest a Corrective Action Order (CAO) that is issued in an emergency, without a prior hearing, as is the law governing emergency orders issued by the PHMSA Office of Hazardous Materials Safety. This would not prevent PHMSA from issuing safety orders and should not add a significant burden on PHMSA.

Finally, we encourage the Committee to consider expediting the timeline for PHMSA to issue its rulemaking on these important administrative enforcement procedures. Just this week, PHMSA published a General Policy Statement on its informal hearing process. Although the policy statement is non-binding on the agency, AOPL and API appreciate PHMSA's efforts to issue a policy statement that is consistent with some of the reforms required by Section 26. Because of the limited nature of the issues in the rulemaking, and given that PHMSA has already issued a policy statement that advances the implementation process, we submit PHMSA should be able to complete the rulemaking in less than two years.

3. Gathering Lines – AOPL and API do not oppose Section 4, which would require the Secretary of Transportation to review exemptions for gathering lines

and report to Congress about whether any exemptions should be modified. We believe, however, that Congress should not presume that a PHMSA rulemaking is required on this issue, as S. 275 does. Gathering lines can be regulated by the States, the Environmental Protection Agency (EPA), and federal lands agencies. There is no evidence this regulatory framework has failed. Should Congress decide, nevertheless, to expand PHMSA's reach, we would urge Congress and PHMSA to proceed cautiously. Many gathering lines are not large enough for the use of "smart pigs". Moreover, an overly burdensome regulatory approach that does not take into account the unique operating characteristics of gathering lines could cause them to become uneconomic, potentially shutting in significant supply. We believe the Draft approach is an improvement to the provision in S. 275.

4. Leak Detection – Section 10 would require a study of leak detection technologies for liquids pipelines, which AOPL and API do not oppose. Leak detection systems are very complicated and typically calibrated to the unique characteristics of an operator's system. A 2007 study by PHMSA noted these complexities and did not suggest that a one-size-fits-all leak detection standard was appropriate. AOPL and API are concerned, however, with the Draft's provision that essentially pre-judges the outcome of the study by requiring a PHMSA rulemaking on leak detection standards "based on the study". We

believe Congress should not presume that a PHMSA rulemaking is required before a study is completed. The study may logically conclude a rulemaking is not necessary. Similarly, S. 275 requires a PHMSA rulemaking regarding leak detection technologies "as appropriate", regardless of the findings of the study. AOPL and API believe the important place to focus concerns about leak detection are on system-specific leak detection capability evaluations and technological advances, not a one-size-fits-all mandate for performance standards. AOPL and API submit that, once the study is completed, PHMSA should determine whether or not to proceed with a rulemaking based on the results of the study, not on a Congressional pre-determination.

5. Incident Notification – AOPL and API do not oppose Section 11, which would require the Secretary of Transportation to review procedures for pipeline operators and the National Response Center (NRC) regarding notification of pipeline accidents. Pipeline operators are currently required by federal regulation to notify the NRC of a pipeline release at "the earliest practicable moment.' The NRC, in turn, provides notice to agencies, federal responders and other appropriate entities. The Draft would replace the technically based administrative interpretation of "earliest practicable moment" with an inflexible one-hour deadline, potentially causing an increase in false alarm notifications. The impact of imposing an inflexible reporting time period, therefore, should be

carefully considered. Moreover, approval of a strict one-hour deadline would be particularly problematic if not accompanied by the revisions to the NRC reporting process in the Draft.

When a pipeline operator contacts the NRC to report a release, it is required to estimate the volume of the release. Currently, a pipeline operator is not allowed to revise the estimate later without a new report being created and issued. This can cause operators to feel compelled to develop more precise estimates of leaks, even though this level of precision may not be immediately necessary, and thereby delay notification. Notification provisions should provide the NRC and federal responders with the information they need to calibrate responses, but should not require a level of precision in making initial estimates upon the occurrence of an event that is not practical to achieve.

Apart from the one-hour reporting requirement, we support the changes to the NRC reporting process included in the Draft, as compared to the relevant provisions in S.275. Pipeline operators should be 1) allowed to inform the NRC during initial notifications whether a suspected release could be small, medium, large, or very large, and 2) provide an improved volume estimate later. These changes could help facilitate earlier notifications and ultimately provide more accurate and complete information to responders. Otherwise, advancing the statutory notification deadline may cause pipeline operators to notify the

NRC of potential releases even before definitively concluding a release has occurred or having a reasonable understanding of the magnitude of a release. False alarm notifications cause unnecessary deployments of first responders, and an unwarranted expenditure of resources and manpower. In order to comply with an impractical standard, operators may be forced to treat any abnormal condition as a suspected release even before concluding a release is actually occurring.

S. 275 takes a different approach. S. 275 would require the Secretary of Transportation to review incident notification reporting procedures, without replacing the administrative interpretation of the "earliest possible moment". We support the decision in S. 275 to require a review of procedures but to not change the deadline. However, S. 275 appears to replace the currently effective NRC notice requirement with a new and unwieldy requirement for a pipeline operator to directly notify State and local officials potentially along the entire right-of-way. Congress should maintain the structure of notifications to the NRC, because it is the well-established federal entity that disseminates information to the myriad of federal, state and local stakeholders involved in a release.

6. PHMSA enforcement of facility response plans – AOPL and API do not oppose Section 12 of S. 275, which extends PHMSA enforcement authority over

facility response plans under Subparagraphs (A) and (B) of section 311(m)(2) of the Federal Water Pollution Control Act. AOPL and API do not oppose Subparagraphs (A) and (B) of the Draft, which would authorize PHMSA to require recordkeeping and reporting, and to inspect facilities and records at covered pipelines. However, we oppose Subparagraph (C) of the Draft, which would authorize PHMSA personnel to arrest pipeline operators with or without a warrant, and execute warrants. S. 275 has no such provision, and no such provision is warranted. While PHMSA may enforce its regulation of pipeline operators through the issuance of civil and criminal penalties, it is currently not authorized to arrest a pipeline operator for a violation of law. There is no reason why it should be granted such powers in these circumstances. Law enforcement authority should continue to be exercised by those with such authority today, not by PHMSA.

7. Carbon dioxide pipelines – Nearly all carbon dioxide is transported by pipeline in a supercritical liquid state today. Any transportation in a gaseous state in the future may occur in the same pipelines that carry carbon dioxide in a supercritical liquid state. Therefore, AOPL and API support the regulatory approach taken in Section 20, which provides that PHMSA may issue rules for transportation of carbon dioxide in a gaseous state in accordance with the rules which govern supercritical carbon dioxide transportation today. There should

not be two regulatory standards for the transportation of chemically similar products.

8. Transportation-related oil flow lines – AOPL and API believe lines from a production well to a processing unit should remain exempt from the PHMSA regulation proposed in Section 15, and subject to regulation by the States, Federal land agencies, and EPA. These lines are related to production, not interstate movement of oil or petroleum products. The fact that these production-related lines can leave the property of the operator and cross other property using rights of way does not change their essential nature. There is no evidence the existing regulatory framework has failed.

9. Community pipeline information grants – AOPL and API do not oppose the current technical assistance grants program. However, we believe Congress should ensure that the focus of the grants is true technical assistance, particularly when the grant program may become eligible for Pipeline Safety User Fees. Current law prohibits the use of these grant monies for "lobbying" or "direct support of litigation". Section 27(e) of the Draft should be revised to also prohibit use of grant funds by an awardee or contractor for any type of advocacy work, including with respect to pipeline construction or expansion projects, or pipeline safety standards or practices. Making these grants eligible for funding by Pipeline Safety User Fees seems inconsistent with the spirit of

user fees, which traditionally fund the activities of a regulator, but we would not oppose such eligibility so long as the prohibited uses clause is amended as we suggest. Also, we believe Congress should establish an authorization for this program of no more than $2,000,000.

10. Cost recovery and design reviews – AOPL and API support the change made to Section 17 requiring PHMSA to provide timely responses and guidance to operators for any projects that meet the prescribed considerations. In addition, AOPL and API support additional guidance afforded by a rulemaking at PHMSA to explain the applicability of how the agency will determine what is "new or novel technology."

11. Special permits – AOPL and API support the change made to Section 18 to make the review criteria less subjective and more balanced, by directing that the issuance of special permits be based solely on an operator's compliance and safety history.

12. Civil penalties - Both the Draft and S. 275 would substantially increase maximum civil penalties. Under each proposal, the maximum penalty for serious violations would increase from $100,000 per violation day and $1,000,000 per series to $250,000 per violation day and $2,500,000 per series. This is a substantial increase of 150 percent from current law, on top of significant increases in the 2002 Pipeline Safety Act. AOPL and API do not

oppose the proposed changes, but call the substantial increases to the Committee's attention.

13. User fee increases and potential consumer impacts - PHMSA primarily recovers its costs for pipeline safety through Pipeline Safety User Fees, which are paid by oil pipelines, and transfers from the Oil Spill Liability Trust Fund, which are paid by the oil industry. Both of these costs are passed through to pipeline shippers to some extent and are ultimately borne by consumers, rather than taxpayers. A recent analysis produced by the Congressional Budget Office (CBO) found that user fee collections under S.275 would be $365 million over a three-year period.[1] Both the Draft and S. 275 would increase the number of PHMSA personnel authorized in the law. The Draft would require several rulemakings, reviews and studies, which could result in still more rulemakings. AOPL and API do not oppose the additional PHMSA responsibilities, except as otherwise stated herein, but we note the potential financial impact to operators and, ultimately, consumers.

Conclusion

AOPL and API support the thoughtful and meaningful improvements made in the Committee's proposal on pipeline safety reauthorization. We applaud the

[1] Congressional Budget Office Cost Estimate of S.275. June 9, 2011, http://www.cbo.gov/ftpdocs/122xx/doc12235/s275.pdf

decision to delegate many technical and engineering risk management decisions to PHMSA. We hope to offer our support for a comprehensive reauthorization bill that improves pipeline safety in a responsible manner. The Draft appears to achieve these goals well, with the recommended changes noted.

Again, thank you for the opportunity to be here today. I am happy to answer any questions.

Mr. WHITFIELD. Thank you, Mr. Black.

Mr. Martin, you are now recognized for 5 minutes.

STATEMENT OF DANIEL B. MARTIN

Mr. MARTIN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Dan Martin; and I am senior vice president of pipeline safety for El Paso Pipeline Group. El Paso owns and operates 43,000 miles of interstate and natural gas pipelines, representing 13 percent of the total U.S. capacity. Twenty-six percent of the natural gas consumed in the U.S. flows through one of our pipelines.

Today I am testifying on behalf of the Interstate Natural Gas Association of America, or INGAA. Our members include virtually all of the interstate natural gas transmission pipelines in the United States, operating about 220,000 of large-diameter pipelines that are analogous to the interstate highway system.

Last month, INGAA testified before this subcommittee and outlined our perspectives on pipeline safety generally and our positions on particular provisions of the Senate pipeline safety bill, S. 275, specifically.

We stated this last month, but it bears repeating, that while the safety record of the natural gas transmission system is very strong, we at INGAA recognize that continuous improvement in the safety of our pipelines is an imperative. Our goal is zero pipeline incidents. This is an ambitious goal to be sure, but it is only by setting ambitious goals that the highest levels of performance can be reached.

We think that the draft bill being discussed today does advance continuous improvement in pipeline safety, and therefore we support this bill and offer the following comments:

First, on damage prevention. We think the draft bill is extremely aggressive in terms of eliminating exemptions from participation. Most, if not all, of the groups at this table support comprehensive damage prevention or call-before-you-dig programs as the best solution for avoiding the most preventible and the most deadly type of pipeline accident. Added to the already strong list of prohibited exemptions from the Senate legislation is mechanized excavation, which effectively is requiring universal participation by all major excavators. This is raising the bar significantly.

Next is the provision on integrity management. Our association has embraced the idea of expanding integrity management beyond the existing focus on high-consequence areas, and we therefore support authorization from Congress for DOT to undertake such an effort. We do think that it is important to continue to focus on reducing risks in populated areas and likewise want to see the Integrity Management Program expanded in a manner that reduces risk to an increasing number of people living or working near pipelines. The draft bill enumerates those components of an expansion.

The draft bill also requires a rulemaking on removing the redundancy between legacy class location regulations to natural gas transmission pipes and the newer integrity management regulations. Both regulations are designed to address the same issue, reducing the risk of an incident in populated areas. The difference is that class location requirements were created in 1970 before pipe-

line inspection technologies were invented and therefore before the development of pipeline monitoring capabilities that are a realty today under the Integrity Management Program.

Let me be clear. The Integrity Management Program regulates all natural gas transmission pipeline segments located in populated areas, including especially the most densely populated areas. Our goal is to eliminate the belt and suspender situation today, where we have a newer and far superior regulation that has been added, while at the same time an older regulation to accomplish the same objective has remained in place.

As we mention in our written testimony, when DOT performed its cost-benefit analysis on the gas transmission integrity management rule back in 2003, it assumed that class location requirements would be waived for pipe segments covered under the new Integrity Management Program and therefore counted a $1 billion savings to industry as part of the new rules benefit. Rather than depending on waivers to address this redundancy, though, there ought to be a consistent policy developed through a rulemaking. If integrity management is a program that needs to be expanded, then we should also eliminate older, less effective regulations designed to address the same issues.

Mr. Chairman, we have other comments in our written testimony, but in the interest of time I will conclude here by thanking you and the subcommittee for inviting INGAA to comment on the draft bill and, most importantly, for getting this reauthorization under way so it can be completed this year.

I will be happy to answer questions at the appropriate time.

[The prepared statement of Mr. Martin follows:]

TESTIMONY OF
DANIEL B. MARTIN
SENIOR VICE PRESIDENT OF PIPELINE SAFETY
EL PASO PIPELINE GROUP

ON BEHALF OF THE
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

HEARING REGARDING THE
"PIPELINE INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF 2011"

JULY 15, 2011

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Mr. Chairman and members of the Subcommittee:

Good morning. My name is Daniel Martin, and I am senior vice president of pipeline safety at the El Paso Pipeline Group, as well as the chairman of INGAA's research arm, the INGAA Foundation. El Paso's Pipeline Group owns and operates 43,000 miles of interstate natural gas pipelines, representing 13 percent of the total U.S. capacity. We deliver 26 percent of the natural gas delivered to U.S. consumers. Our pipelines transport natural gas from Gulf Coast supply areas, the prolific Rockies supply basins, and the shale plays that will play a significant role in meeting the nation's long-term natural gas supply. We deliver natural gas to the major consuming markets of the Northeast, Southeast, Rockies, and Southwest, as well as Mexico.

Today I am testifying on behalf of the Interstate Natural Gas Association of America, or INGAA. Our members operate approximately two-thirds of the nation's natural gas transmission pipelines and 90 percent of the interstate natural gas transmission pipelines in the United States. The pipeline systems operated by INGAA's member companies are analogous to the interstate highway system, transporting natural gas across state and regional boundaries. Last month INGAA testified before this Subcommittee and outlined our perspectives on pipeline safety generally and our positions on particular provisions of the Senate pipeline safety reauthorization bill (S. 275) specifically. We stated that S. 275 is a bill INGAA supports. Today, I will direct our comments to the Energy and Commerce Committee draft bill. Let me state at the outset that the draft – which largely is based upon S. 275 – also is a bill INGAA can support. In fact, we would urge that

several provisions contained in this draft House bill be included in any final legislation enacted by the House and Senate.

COMMENTS ON THE DRAFT BILL

INGAA has established for the natural gas transmission pipeline industry a goal of moving to a "zero-incident" environment. This is an aggressive goal that will require determined and sustained effort over time on a number of fronts, including integrity management, damage prevention and technology research. The draft bill would establish or improve programs like integrity management and damage prevention, which will play a major role in moving our nation to an increasingly safer pipeline network. Our comments below highlight provisions of the draft bill that are particularly noteworthy, as well as areas where we would recommend further refinement:

Damage Prevention

The draft bill continues the decade-long effort to improve state damage prevention laws by setting strong minimum standards and prohibiting exemptions for mechanical excavators, municipalities, state agencies (such as highway departments) and their contractors. Accidental damage to pipelines by excavators remains a leading cause of deaths and injuries along pipeline systems. Excavation incidents are the most avoidable type of pipeline incidents, and the best method for prevention is through comprehensive damage prevention programs. Requiring all excavators to "call before digging" is critical to a successful damage prevention program, and therefore exemptions from participation,

especially for large-volume excavators, make little sense. INGAA strongly supports this provision of the draft bill.

Automatic and Remotely Controlled Shut off Valves

INGAA believes that this provision is balanced and well written, and therefore supports it. We recommend striking existing section 60102(j)(3) of title 49 because it would be superseded by this new provision.

Integrity Management

This is perhaps the most important section in the bill. INGAA generally supports the update of the natural gas transmission Integrity Management Program envisioned in the draft bill. Still, we have a few comments:

1) **Scope** – The bill would require the Secretary of Transportation to evaluate an expansion of integrity management beyond existing "high consequence areas," which for natural gas transmission pipelines are those pipe segments located in populated areas. The Secretary would be required, within one year, to make recommendations to Congress on whether to expand the program, and if so, to what degree. We note that the section specifically enumerates factors upon which the Secretary should base the recommendations. These factors include the need to remain focused on reducing risks in populated areas, as well as the expansion of integrity management in a manner that reduces risks to an increasing number of people, rather than simply an unfocused increase in the number of pipeline miles covered under the program. INGAA believes that it is

important for Congress to provide the Secretary with this guidance that the priority of integrity management should remain risk-reduction.

2) **Class location regulation redundancy** – The pipeline safety regulations for natural gas transmission lines promulgated in 1970 included "class location" requirements intended to ensure that pipeline operators employ an increased margin of safety for pipeline segments located in populated areas. Pursuant to these regulations, pipelines must undertake periodic surveys to identify population increases in close proximity to pipeline rights-of-way. Where applicable, the regulations require that this increased margin of safety be achieved by: (1) installing replacement pipe with a higher strength relative to operating pressure; (2) reducing the operating pressure of the system; or (3) undertaking pressure testing. In practice, the primary method for complying with this requirement has been pipe replacement.

When proposed a decade ago, it was assumed that the Integrity Management Program (IMP) largely would supplant class location requirements, since both programs are designed to reduce risk in populated areas and the IMP is a far more sophisticated, data-driven alternative. In fact, when the Department of Transportation (DOT) developed its cost-benefit analysis for the integrity management rule in 2003, the agency assumed that the industry would save $1 billion over 10 years because class location requirements would be waived for pipe segments covered by the IMP.[1] While PHMSA has granted a

[1] RSPA Final Regulatory Evaluation, Pipeline Integrity Management in High Consequence Areas, Docket RSPA-00-7666-356.

limited number of such waivers, a uniform requirement that avoids redundancy would be a more efficient and consistent solution.

Section 7(d) of the draft bill requires the Secretary to initiate a rulemaking within two years to eliminate class location requirements for natural gas transmission pipeline segments regulated under the IMP. INGAA strongly supports this provision.

3) **Technical correction on reassessment intervals** – Section 7(f) of the draft bill makes a technical correction to the reassessment interval for natural gas transmission lines covered under the IMP. The current requirement is seven years, which DOT has interpreted to mean precisely 84 months. The effect of this hard deadline is that operators are compelled to schedule both inspections and any repairs well in advance of the seven-year deadline, which over time shrinks the interval and starts to create operational problems as pipelines struggle to avoid conducting inspection and maintenance during peak winter and summer demand periods. This subsection clarifies that the interval is seven calendar years, not to exceed 90 months. The liquid pipeline integrity management regulations include similar flexibility, albeit eight months of leeway as opposed to the six months contained in the draft bill for the natural gas transmission IMP. This correction provides reasonable regulatory flexibility while still meeting the overall mandated seven-year requirement. INGAA strongly supports this provision.

Incident Notification

INGAA supports the Senate provision on this issue but notes that the draft bill provides some modifications that we would support. For example, the draft bill focuses on timely reporting to the National Response Center, and reasonable estimates of volume releases are permitted. An operator also is permitted to revise information reported to the National Response Center as more data becomes available in the hours after an incident.

Cost Recovery for Design Reviews

The Pipeline and Hazardous Materials Administration (PHMSA) now is funded, almost exclusively, through user fees assessed on regulated liquid pipelines, LNG terminal owners and natural gas transmission pipelines. The proceeds of this user fee fund the operations and staff of PHMSA, as well as the state grants that PHMSA provides annually.

PHMSA contends that a special user fee should be created to recover costs incurred when it reviews proposed new, large pipeline construction projects. PHMSA has indicated that this authority would be used only for exceptionally large projects that require significant PHMSA staff resources. The draft bill creates a threshold for this new user fee that would apply to projects with a total cost of $4 billion or greater (adjusted for inflation on a periodic basis), or projects that use "new or novel technologies or designs."

INGAA supports the modifications that have been made to this section in the draft bill. In particular, we support the guidance defining what is meant by the term "new or novel

technologies." We suggest that, to avoid having this applied in an unintended broad manner, this provision cover only those projects that propose to use "prototype or unique technologies or designs." INGAA also wants to ensure that, to the extent special fees are collected under this program, PHMSA does not count such costs in the annual budget baseline which is offset by existing user fees collected under 49 USC 60301. Such a situation would, in effect, create a double collection of fees for the same activities. For this reason, we suggest modifying the amendment to section 60117 (n) to state that: "The Secretary shall not collect fees under section 60301 for activities in which a fee is collected for design reviews under this subsection."

Special Permits

INGAA generally agrees with the modifications to special permit approval and review that are encompassed in this section. We suggest, however, that there be a predictable process if PHMSA proposes to modify, suspend or revoke a special permit. Such processes might include, for example:

- requiring the Secretary to consider the commercial and/or market implications of a change in pipeline operations that could result from the permit alteration, and
- providing an on-the-record hearing to the operator within a reasonable timeframe.

Administrative Enforcement Process

While Congress has granted PHMSA considerable enforcement authority in recent years, and now proposes to enhance that authority in the pending reauthorization bill, the "due process" required in PHMSA enforcement actions has not kept pace. PHMSA does not

have the same procedures utilized by many other federal and state agencies – procedures that ensure a predictable and fair enforcement process.

The draft bill contains an important provision that directs PHMSA to develop regulations designed to ensure that pipeline operators receive a fair hearing in enforcement proceedings. INGAA supports this provision.

Pipeline Safety User Fees

As mentioned previously, PHMSA is funded primarily through user fees assessed annually on jurisdictional liquid pipeline operators, liquefied natural gas terminal operators and natural gas transmission pipeline operators. The statute that created the user fees in 1986[2] specifically limits the collection of user fees from the natural gas sector to "each person operating a gas pipeline transmission facility," with the exception of LNG terminal operators who have their own user fees. As a result, natural gas transmission pipeline operators now are being assessed user fees that fund a variety of regulatory activities that are outside the scope of transmission pipeline regulation, particularly with respect to natural gas distribution programs and state grants. These gas distribution program costs were once small. Now, they are considerably larger than the costs for gas transmission activities – in fact, twice as large according to recent data from PHMSA. This means that the natural gas transmission user fee now paid to PHMSA is three times larger than it would be if it were a genuine user fee program in which all users contributed according to cost causation.

[2] 49 USC 60301

While interstate pipelines are authorized by FERC to charge cost-based maximum rates that include the recovery of such user fees, pipelines in practice often must discount rates in order to retain business in a competitive environment. Such competition places pipelines at risk of not fully recovering the costs included in their rates, including the cost of PHMSA user fees. Given that the aforementioned PHMSA fees associated with gas distribution are not related to the transmission of natural gas, such costs should not be borne by transmission pipelines and/or their customers.

INGAA currently is engaging key stakeholders to develop a legislative solution for recovery of these non-transmission costs. If an agreement can be reached, we hope the Committee will include such a provision in future versions of this legislation.

CONCLUSION

Mr. Chairman and members of the Subcommittee, INGAA supports reauthorization of the Pipeline Safety Act this year. If enacted, the draft legislation that we are reviewing today would provide a framework supporting the achievement of our goal of zero pipeline incidents. We applaud the priority you have placed on developing this bill and seeking comments from stakeholders. Since this draft legislation closely mirrors the Senate Commerce Committee bill, the likelihood that a reauthorization bill can be completed by the end of the year increases. We thank you for holding this hearing and seeking our comments.

SUMMARY OF INGAA TESTIMONY

The Interstate Natural Gas Association of America (INGAA) represents interstate natural gas transmission pipelines in the United States. Our members operate a 200,000 mile network of large-diameter pipelines that transport natural gas supplies throughout the nation.

The Energy and Commerce Committee has prepared a draft Pipeline Safety Act reauthorization bill that closely mirrors legislation already moving through the Senate. INGAA supports the Senate legislation, and it supports the committee draft, which includes a number of improvements over the Senate bill. These improvements include provisions on integrity management (such as the elimination of duplicative class location regulations, and clarification of gas transmission reassessment intervals), damage prevention, incident notification, administrative enforcement procedures, and cost recovery for design reviews. We hope the Committee will consider additional refinements to the special permits section, and if agreement can be reached among stakeholders, a provision on the recovery of PHMSA user fees related to those natural gas programs which are not associated with transmission.

Mr. WHITFIELD. Thank you very much, Mr. Martin.
Mr. Kessler, you are recognized for 5 minutes.

STATEMENT OF ERIC KESSLER

Mr. KESSLER. Thank you, Mr. Chairman, and thank you, Chairman Upton and members of the committee and subcommittee. I appreciate you inviting the Pipeline Safety Trust to speak today and provide its views on the draft legislation.

Now, according to PHMSA's own statistics for the past 10 years, pipeline accidents kill or hospitalize at least one person in the U.S. every 8.7 days on average and cause more than $470 million in property damage each year. Even since the Trust testified last month before the committee, another incident has dumped somewhere on the order of 42,000 gallons of crude oil into the Yellowstone River. On top of tragedies in Michigan, California, and Pennsylvania, I think it is important that we now move forward on a strong bill to address the tragedies of the past year and close gaps in pipeline safety that have been identified to help restore the public trust.

I agree with my friend and former committee colleague, Mr. Black, in that the draft bill is a good start, but, because time is short, I am going to focus on some improvements we think need to be made to the bill.

In Section 2, civil penalties, PHMSA has ample discretion in how it applies fines and usually leans toward the low end, in our opinion, if a fine is even levied at all. If Congress is to create a new major consequence category, the words "knowingly, willfully, and intentionally" must be removed, since those are standards that are not only very difficult to prove but more appropriate for criminal, not civil, penalties.

Gathering lines, section 4, PHMSA has already told its technical advisory committees that there are problems with the regulations of these lines so there is no more need for study. Instead, this section should require the necessary rule changes; and those changes should include clarifying definitions, adding lines to the national mapping system, reporting incidents, and bringing these lines under similar regulations to transmission pipelines.

In section 5, the new rules for the placement of remote or automatic shutoff valves should be expanded to at least include existing lines in high-consequence areas, not just new lines. The current draft would have provided no increased safety for San Bruno.

Integrity management, we completely support moving forward on expanding integrity management, as INGAA has called for as recently as yesterday. Since class locations also are what in many ways define which pipelines fall under integrity management, at a minimum any change in class location rules must go hand in hand with expansion of integrity management, I think a point my friend, Mr. Martin, was getting at.

With regard to cast iron pipelines, while the survey required in this section is important, this problem has been known for years and continues to kill people. It is time to move beyond surveys and put in place rules that will force pipeline companies and State rate setting agencies to responsibly and expeditiously replace cast iron, bare steel, and other high-risk pipelines.

Leak detection, we feel this section does little to address the current leak detection shortcomings. Leak detection is already required for pipelines in high-consequence areas, but, as we have seen in Salt Lake City, North Dakota, and Michigan, leak detection systems in place did little good. What is needed is a clear standard to define the size of the leak the system is required to be able to detect and the time required for the system to issue an alarm.

Oil flow lines, the limitation in this section that precludes PHMSA from regulating oil flow lines needs to be removed, in our opinion. There is ample evidence that these lines can and have caused significant damage. We just saw this recently again in Montana with the FX drilling flow line spill which went unreported for a week.

Special permits limits the Secretary to reviewing only a company's regulatory record when considering whether to grant a waiver from a safety standard. Certainly they should be considering that, but, by limiting it, you leave out a number of important considerations, contextual issues like population density or environmental sensitivity.

Maintenance of effort, we question the need to require the Secretary to grant a waiver to States who claim financial hardship, particularly since most States can make that claim if they want to. I have been a State employee. Most States are in a crunch. But the Secretary already has the authority to waive and has used it. And the reality is that States can charge pipeline companies user fees to fund their safety programs or find other methods, so excuses of financial troubles should have little bearing, and it is also unfair to States that make the effort, particularly as pipe infrastructure greatly expands in nontraditional areas like the Marcellus shale.

Section 26 relating to administrative enforcement is at best unnecessary, since they address regulations DOT can and have started to change on its own initiative. They issued a rule just last week. At a minimum, the requirement for hearing on the record within 20 days must be removed, because it will severely drain very finite sums of resources finitely that should be going to safety.

Finally, in summing up, one critical area covered in the Senate bill left out of this draft was a provision on maximum allowable operating pressure, which is a real problem in San Bruno.

Thank you again. We stand ready to work with you to move this reauthorization forward; and with the changes I have outlined here the committee can continue to report the kind of bipartisan, balanced bill we did when I worked here in 2002 and 2006. Thank you.

[The prepared statement of Carl Weimer follows:]

TESTIMONY OF
THE PIPELINE SAFETY TRUST

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Presented by:

Carl Weimer, Executive Director

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

DISCUSSION DRAFT OF H.R. ____, THE "PIPELINE INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF 2011

JULY 15, 2011

Good morning, Chairman Whitfield, Ranking Member Rush and members of the Subcommittee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Carl Weimer and I am testifying today as the Executive Director of the Pipeline Safety Trust. I am also a member of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee, as well as a member of the steering committee for PHMSA's Pipelines and Informed Planning Alliance. I also serve on the Governor-appointed Washington State Citizens Committee on Pipeline Safety, and bring a local government perspective to these discussions as an elected member of the Whatcom County Council in Washington State.

We are pleased to see this committee moving forward with a bill to address reauthorization of the national pipeline safety program. Even since I was here less than a month ago another incident has dumped somewhere in the order of 42,000 gallons of crude oil into the Yellowstone River in Montana, once again causing the American public to lose trust in pipeline safety. Clearly trust in pipeline safety has now been lost in Montana, so add that state to Michigan, California, and Pennsylvania where people now question whether the industry, regulators and legislators are really doing all they can to keep people and the environment safe. Moving forward a strong bill to address the tragedies of the past year, and close gaps in pipeline safety that have been identified, will help restore that trust.

Today I would like to focus my comments on the following sections of the draft bill, and a couple of areas that seem to have been omitted from the current bill and should be included:

- Section 2 – Civil Penalties
- Section 4 – Gas and Hazardous Liquid Gathering Lines
- Section 5 – Automatic and Remote-Controlled Shut-Off Valves
- Section 7 – Integrity Management
- Section 8 – Public Education and Awareness
- Section 9 – Cast Iron Gas Pipelines
- Section 10 – Leak Detection
- Section 11 – Incident Notification
- Section 13 – Pipeline Infrastructure Data Collection
- Section 15 – Transportation-Related Oil Flow Lines
- Section 17 – Cost recovery for Design Reviews
- Section 25 – Maintenance of Effort
- Section 26 – Administrative Enforcement Process
- Section 27 – Authorization of Appropriations
- Maximum Allowable Operating Pressure verification and Reporting
- Implementing the Pipelines and Informed Planning Alliance (PIPA) recommendations

Section 2 – Civil Penalties

We support the increase in potential civil penalties, although we think potential penalties should be available for any violation, so we do not think it is necessary to create a whole new category for Major Consequence Violations. PHMSA has ample discretion in their enforcement authority to use a wide range of fines, so it is not necessary to limit them in statute as to when these larger fines can be used.

If it is decided to create such a new and unnecessary category of civil violations, then the addition of the words "knowingly and willfully" in this section makes the burden of proof for these violations the same as for criminal violations. This burden of proof is very high, and in practice, would render this new section useless. In the entire history of the federal government's regulation of pipeline safety there has been only one criminal prosecution, for the Bellingham incident. But there have been many civil penalties assessed, for example, in Carlsbad, New Mexico where twelve persons were killed. Moreover, the effect of this amendment would be to make it impossible for PHMSA to enforce against an operator who violated a regulation negligently. Given that pipelines carry massive amounts of explosive, flammable and toxic materials, operators should be subject to penalties for any violation of the regulations, without regard to what they knew or what they intended. The potential consequences of pipeline incidents justify placing the burden on the operator to assure that their facilities operate in compliance with the regulations at all times.

For those reason we think the "knowingly and willfully" should be removed.

There are also some situations where because of a lesser violation it may become apparent that a company has been seriously misinterpreting the regulations or misapplying risk-based management leaving other parts of their system ripe for significant failures. PHMSA should be able to use these larger fines to help correct those types of findings. To allow this, after Section 2 (c) (3) (C) insert new section (D) that states:

> (D) a clear recognition by the Secretary that the company has significant problems with their pipeline safety program that could lead to other Major Consequence Violations in the near term.

Section 4 – Gas and Hazardous Liquid Gathering Lines

PHMSA has already told their technical advisory committees that they have found problems with the current regulations regarding gathering lines[1]. There is no reason to delay by asking for them to report on this yet again, instead they should be required to move to develop new regulations as soon as possible with some minimum inclusions. Here is some proposed language.

> *Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall release an advanced notice of proposed rulemaking (ANPRM) to solicit comments on the adequacy of current regulations, and the safety of all exemptions, for gas and hazardous liquid gathering lines. The ANPRM shall at a minimum announce intentions to clarify the definition of gathering lines, require reporting of incidents on all gathering lines, and require all gathering lines to come under the same regulations as transmission pipelines.*

If the above suggestion is not taken, then at a minimum the following change should be made.

Line 4, Page 7 – change to read "all ***existing regulations and*** exemptions …

Section 5 – Automatic and Remote-Controlled Shut-Off Valves

This section should not only apply to pipelines "constructed or entirely replaced" after a rule is passed. At a minimum, a new rule should mandate the installation of automated valves on all pipelines in High Consequence Areas (HCAs). Maximum allowable distance between such valves in HCAs should also be defined.

Many existing pipelines, like the one that failed in San Bruno, are at least as much of a concern as new pipelines. There are already hundreds of thousands of miles of transmission pipelines in existence and only a very small percentage of mileage is added to that total each year. As written, this section provides no protection for people living near existing transmission pipelines (as in San Bruno) and only incremental protection for a tiny number of persons.

For liquid pipelines in 1992, 1996, 2002, and 2006, Congress required OPS to "survey and assess

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[1] PHMSA, Briefing Papers, Onshore Gas Gathering Lines & Hazardous Liquid Gathering Lines, March 24, 2011

the effectiveness of emergency flow restricting devices…to detect and locate hazardous liquid pipeline ruptures and minimize product releases"[2] with the first such requirement having a deadline in 1994 (17 years ago!). Following this analysis, Congress required OPS to "prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device."[3]

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule[4], OPS rejected the comments of the NTSB, the US Environmental Protection Agency, the Lower Colorado River Authority, the City of Austin, and the Environmental Defense Fund and chose to leave EFRD decisions up to pipeline operators after listing in the rule various criteria for operators to consider. Such an approach to EFRD use does not appear to meet Congressional intent, partly because the approach is essentially unenforceable and not protective of important environmental assets such as rivers and lakes including those not considered High Consequence Areas

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Section 7 – Integrity Management

Expansion of integrity management is one of the most important things that can be done to help prevent future major incidents, and major pipeline industry groups such as the Interstate Natural Gas Association of America have supported such expansion. While we support the evaluation in this draft bill, we prefer the language in the bill from the Senate Commerce Committee, which includes both a review of the need to expand integrity management and whether that expansion would allow for the elimination of class locations for gas pipelines. The Senate bill requires review and rulemaking for both ideas, whereas the bill this committee is drafting only requires study of the important idea of expansion of integrity management, but mandates class locations be eliminated. Class location rules currently protect the densest population areas in the nation. Class location rules should not be eliminated unless and until industry has demonstrated to PHMSA's satisfaction that integrity management principles are in place and at least as protective.

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[2] See 49 USC 60102(j)(1)
[3] See 49 USC 60102(j)(2)
[4] See 49 CFR 195.452(i)(4)

Section 8 – Public Education and Awareness

There are a number of important things that are missing in this section that were included in the Senate bill. They include:

- maintain a current copy of any industry-developed or professional organization pipeline safety standards that have been incorporated by reference into regulations, to the extent consistent with fair use.

- maintain a comprehensive list, to be updated annually, and individual copy of each hazardous liquid pipeline operator's facility response plan pursuant to section 311(j)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)), excluding any proprietary or security-sensitive information that may be contained in an operator's plan

We ask that these items be added to the bill being considered today.

Section 9 - Cast Iron Gas Pipelines

This section does nothing to solve the problem around cast iron pipelines. All it does is continue to have PHMSA do a survey so PHMSA knows how bad the problem is. Congress should request a study to determine which type of cast iron pipe is most at risk, and based on already successful replacement programs what a realistic, but expedient, replacement date would be for all the cast iron pipelines most at risk. Based on those findings PHMSA should be required to implement regulations to require states and pipeline companies to implement such a replacement program.

Section 10 – Leak Detection

This section does little to address the current leak detection shortcomings. Leak detection is already required for pipelines in High Consequence Areas[5] but as we have seen in the past year on the Chevron spill in Salt Lake City, the Enbridge spill in Michigan, and the TransCanada spill in North Dakota the leak detection systems in place did little good. What is needed is a clear standard for what the minimum leak detection capabilities required under various circumstances are. That standard needs to define the size of leak the system is required to be capable of

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[5] 49 CFR 195.452 (i) (3)

detecting, and the time required for the system to issue an alarm in the event that a leak of that size should occur.

Section 11 – Incident Notification

The key for incident notification is that it happens as soon as possible and that the NRC has enough information to notify the correct entities. The use of general volume phrases for the initial call – such as "small, medium and large" may be adequate for this purpose, but the range of those phrases needs to be defined before this change takes place, not two years later as this section is currently drafted.

We also think that the operator needs to be required (not "allowed") to provide more accurate numerical estimates as soon as is practicable, and in no case longer than 24 hours after becoming aware of more accurate information. These more accurate numerical estimates are essential to allow agencies to gauge the adequacy of the responses provided based on the initial report.

Section 13 – Pipeline Infrastructure Data Collection

We support the language in the Senate bill that removes the words "and gathering lines" from Section 60132 (a). With the dramatic increase in the mileage of gathering lines in populated areas, many of them the same size and pressure as transmission pipelines, it is critical that regulators and state and local government at a minimum know where they are. The removal of this phrase will allow this to happen.

Section 15 – Transportation-Related Oil Flow Lines

We support the collection of this data on these oil flow lines to help PHMSA analyze the full extent of these pipeline systems. We do not support adding to the statute language that precludes PHMSA from developing standards for these types of pipelines. There is ample evidence in production states such as Alaska that spills from these types of lines cause significant damage[6], and recently after significant spills BP entered a settlement agreement with PHMSA and EPA

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[6] *North Slope Spills Analysis: Final Report on North Slope Spills Analysis and Expert Panel Recommendations on Mitigation Measures*, Nuka Research & Planning Group, LLC for the Alaska Department of Environmental Conservation, November 2010, 244 pp., http://www.dec.state.ak.us/spar/ipp/ara/documents/101123NSSAReportvSCREEN.pdf

that requires an integrity management program on these types of flow lines.[7] Precluding PHMSA from potentially developing regulations runs counter to pipeline safety and protection of the environment, so the limitation in this new subsection should be removed.

Section 17 - Cost Recovery for Design Reviews

In the draft bill the final sentence in 60117 (n) (1) (A) is drafted incorrectly and precludes collection of design review fees altogether. It should be changed to say:

> "The Secretary shall not collect design safety review fees under this chapter and section 60301 for the same design safety review."

We also think the limitation placed on such design review fees for projects that only "total at least $4,000,000,000" is too high and negates the benefits of this section. We suggest changing the limitation to $250,000,000.

Section 25 – Maintenance of Effort

We oppose the addition of the language that requires the Secretary to grant a state a waiver if they cannot fund their pipeline safety program "due to economic hardship." States have the ability to fund their programs through user fees on the pipelines that run through them, so budget hardships within states should have little or no impact on a state's ability to fund pipeline safety programs. Also, the Secretary already has the ability to waive the funding requirement for states, and during the recent economic downturn did exactly that to ensure the maintenance of adequate state program.

Section 26 - Administrative Enforcement Process

Requiring a hearing within 20 days is too onerous and will in some cases cause a delay in needed action by the Secretary, thereby putting the public at risk. For those reasons we think the exact timeline for a hearing should be left up to the Secretary to determine as part of this required rulemaking.

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[7] http://www.epa.gov/compliance/resources/cases/civil/cwa/bpnorthslope.html

Section 27 – Authorization of Appropriations

We completely support the changes to Section (e). These Community Pipeline Safety Information Grants are one of the few ways that local government and community associations can obtain a relatively small amount of money to hire independent experts to answer pipeline safety questions in their areas. This is the only program within PHMSA that contains a restriction on the use of user fees, and such a restriction makes it much more difficult to obtain actual appropriations for this needed grant program. For those reasons we think this change is excellent. We also note that from the 2010 authorized appropriations in the PIPES act of 2006 and the 2011 authorized appropriations proposed in this bill there is a decrease of over nine million dollars for the general operating budget of the pipeline safety program. Considering this bill asks PHMSA to hire more personnel, and move forward on a range of needed programs, we wonder if reducing their budget makes sense. Perhaps this makes total sense, but from just this high level view of the authorized money we just want to ensure this is considered.

Needed changes not addressed at all in the draft bill

Maximum Allowable Operating Pressure verification and Reporting

The Senate bill includes an important section to address one of the apparent problems that came out after the San Bruno tragedy. Clearly PG&E did not have records that could verify the type of pipeline they had in the ground so they were operating and inspecting that pipeline in inappropriate ways. How widespread this problem is in other companies is unclear, but the Senate bill would provide a means to determine this and prevent the companies from using a loophole in the current regulations to not report over pressure events. For these reason we ask that you include the Senate language in this bill as well.

Implementing the Pipelines and Informed Planning Alliance (PIPA) recommendations

Section 11 of the Pipeline Safety Improvement Act of 2002 included a requirement that PHMSA and FERC provide a study of population encroachment on and near pipeline rights-of-way. That requirement led to the Transportation Research Board's (TRB) October 2004 report

Transmission Pipelines and Land Use[8], which recommended that PHMSA "develop risk-informed land use guidance for application by stakeholders." PHMSA formed the Pipelines and Informed Planning Alliance (PIPA) in late 2007 with the intent of drafting a report that would include specific recommended practices that local governments, land developers, and others could use to increase safety when development was to occur near transmission pipelines.

Most large pipelines were placed in rural areas years ago, but as the populated areas around our cities expanded it has led to growing encroachment of residential and commercial development near large high-pressure pipelines. This increases the risk to the pipelines from related construction activities, as well as to the people who ultimately live and work nearby if something should go wrong with the pipeline.

After more than two years of work by more than 150 representatives of a wide range of stakeholders, the PIPA report and the associated 46 recommendations were released late last year.[9] This is the first time information of this nature has been made widely available to local planners, planning commissions, and elected officials when considering the approval of land uses near transmission pipelines.

In the Pipeline Safety Improvement Act of 2002, Congress required that:

> ***"The Secretary shall encourage Federal agencies and State and local governments to adopt and implement appropriate practices, laws, and ordinances, as identified in the report, to address the risks and hazards associated with encroachment upon pipeline rights-of-way…"***

Although a report has now been prepared, PHMSA has done little or nothing to "encourage" State and local governments to adopt and implement "appropriate practices, laws and ordinances." A recent statewide survey of local government planning directors conducted by the Pipeline Safety Trust[10] showed that to successfully implement these needed "practices, laws, and ordinances" it will take a good deal of well targeted education and promotion by a wide range of stakeholders outside of the pipeline industry and PHMSA.

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[8] http://pubsindex.trb.org/view.aspx?id=749178
[9] http://primis.phmsa.dot.gov/comm/pipa/LandUsePlanning.htm?nocache=371
[10] http://www.pstrust.org/TagGrant1.htm

In order to make this effort successful, the Trust asks that this year Congress authorize, just as was authorized in PIPES for the successful promotion of the 811 "One Call" number, $500,000/year to promote, disseminate, and provide technical assistance regarding the PIPA recommendations.

Thank you again for this opportunity to testify today. The Pipeline Safety Trust hopes that you will closely consider the concerns we have raised and the requests we have made. If you have any questions now or at anytime in the future, the Trust would be pleased to answer them.

Mr. WHITFIELD. Thank you, Mr. Kessler.
Mr. Dippo, you are recognized for 5 minutes.

STATEMENT OF CHARLES F. DIPPO

Mr. DIPPO. Good morning, Mr. Chairman and members of the committee. I am Charles Dippo, vice president of South Jersey Gas Company and chairman of the American Gas Association's Operating Section. I am here today testifying on behalf of AGA, which represents over 200 local energy companies that deliver clean natural gas to more than 65 million customers throughout the United States.

Natural gas pipelines transport one-fourth of the energy consumed in the United States through a safe 2.4 million mile underground pipeline system. This includes 2.1 million miles of local distribution pipelines and 300,000 miles of transmission pipelines that provide service to more than 175 million Americans.

Industry has demonstrated that it can increase the delivery of natural gas while continuously improving safety. Data from PHMSA shows serious incidents and leaks have been reduced by nearly 50 percent over the last 20 years, but as I remind my staff each day, you can never be complacent, because excellence in safety requires continuous improvement.

The pipeline industry leadership has joined Transportation Secretary LaHood in his call to action to repair, replace, or rehabilitate the highest-risk infrastructure and to raise the bar on pipeline safety. To do so, we must keep our focus on key initiatives that are already showing success. This includes distribution and transmission integrity management, control room management, public awareness, excavation damage prevention, and voluntary initiatives, such as AGA's Best Practices Program.

Secondly, we have an opportunity to enhance safety through better excavation damage prevention programs, establishing a data quality committee, reducing hurdles to implementing new technology, and adopting the latest consensus standards. Most importantly, we must obtain pipeline safety reauthorization.

AGA has reviewed the discussion draft bill and commends the committee for developing a solid, bipartisan bill for pipeline safety. AGA is generally supportive of the draft bill. However, we want to highlight a few areas because they cause us some concern.

Let me begin with automatic and remotely controlled shutoff valves. Transmission pipeline ruptures are rare events and operator resources should focus on preventing rather than mitigating pipeline releases. The presence of an automatic shutoff or a remotely controlled valve on a transmission pipeline will not prevent that incident from occurring. The benefit of these valves is the potential reduction in the amount of natural gas released after the incident has occurred.

Although both automatic and remotely controlled shutoff valves allow for faster closure than a manually operated valve, they also introduce the possibility of false valve closures with unintended consequences. Nevertheless, AGA supports the bill language that requires the Secretary to initiate rulemaking that will require the use of automatic or remotely controlled shutoff valves or equivalent technology.

AGA also has concerns that the draft bill's provisions that require operators to make telephonic reports to the NRC no later than 1 hour after discovery will cause thousands of unnecessary reports to be submitted. This will overburden the emergency responders, regulators, and other parties that must respond to NRC notifications.

AGA believes Congress has a legitimate concern to assure that there is prompt notification of pipeline incidents. The record shows that most incidents are indeed promptly reported. Operators are responsible for the operational response to incidents in coordination with their local emergency responders. Standard safety practices and the incident command structure mandate that these tasks receive the highest priority. Once the preliminary extent of a situation is known and local action is initiated, operator personnel will notify the NRC. Typically, the call to the NRC will be made in less than 2 hours.

Prompt local emergency response and Federal reporting are important issues. AGA believes that PHMSA has the technical expertise to promulgate the appropriate regulations on this important issue that balances the needs of all parties and to implement technically-based notification requirements.

Finally, it has been suggested that the Transmission Integrity Management Program be changed and expanded beyond high-consequence areas. AGA believes imprudent expansion would be contrary to the intent Congress has for the program, which is to focus resources on the densely populated and environmentally sensitive areas where an accident will do the most damage.

All pipelines must comply with stringent State and Federal safety standards even before the TIM program is applied. As part of its regulation on transmission integrity management, DOT has already included provisions for pipeline operators to have an added layer of protection on low-stress pipelines which are outside of HCAs already.

AGA believes it is reasonable for Congress to direct DOT to evaluate the effectiveness of the existing Integrity Management Program no later than 1 year after the completion of the baseline assessments in December of 2012. The study should include the comparisons as presented in the draft legislation.

In conclusion, the natural gas utility industry has a strong safety record, and we are committed to working with all stakeholders to improve. To that end, we applaud this committee's focus on moving pipeline safety reauthorization forward. Passage of this important bill this year will help us achieve a common goal—to enhance the safe delivery of this vital energy resource.

Thank you.

[The prepared statement of Mr. Dippo follows:]

WRITTEN TESTIMONY OF

CHARLES F. DIPPO
VICE PRESIDENT, ENGINEERING SERVICES AND SYSTEM INTEGRITY
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ON BEHALF OF THE AMERICAN GAS ASSOCIATION
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BEFORE THE U.S. HOUSE
SUBCOMMITEE ON ENERGY AND POWER
July 15, 2011

Good morning, Mr. Chairman and members of the Committee. I am pleased to appear before you today and wish to thank the Committee for calling this hearing. Pipeline safety is a critically important issue, and I commend you for not only holding this hearing, but for all the work that you and your colleagues have done over the years to ensure that America has one of the safest, most reliable pipeline system in the world.

I am Charles Dippo, Vice President of South Jersey Gas, and Chairman of the American Gas Association (AGA) Operating Section. South Jersey Gas serves customers in 112 municipalities spanning in excess of 2,500 square miles, or one-third of the geographic area of New Jersey, in which one-eighth of its population resides. The service area includes all of Atlantic, Cape May, Cumberland and Salem counties and parts of Burlington, Camden and Gloucester counties. South Jersey supplies its customers through approximately 12,000 miles of distribution and 122 miles of transmission pipeline.

I am here testifying today on behalf of the AGA, which was founded in 1918, and represents over 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which 91 percent — more than 65 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas

companies, pipelines, marketers, gatherers, international natural gas companies and industry associates.

Natural gas pipelines, which transport approximately one-fourth of the energy consumed in the United States, are an essential part of the nation's infrastructure. Natural gas is delivered to customers through a safe, 2.4-million mile underground pipeline system. This includes 2.1 million miles of local utility distribution pipelines and 300,000 miles of transmission pipelines that stretch across the country, providing service to more than 175 million Americans. The recent development of natural gas shale resources has resulted in abundant supplies of domestic natural gas, which has meant affordable and stable natural gas prices for our customers. America needs clean and abundant energy and America's natural gas provides just that. This has made the safe, reliable and cost-effective operation of the natural gas pipeline infrastructure even more critically important, as it is our job to deliver the natural gas to the customer.

CRITICAL PIPELINE INFRASTRUCTURE

AGA believes that the domestic abundance of natural gas and the resulting price stability, when combined with the other advantages of natural gas—including its environmental attributes and efficiency of use—presents us with an unprecedented opportunity. There is direct use of natural gas in core residential and commercial markets, expanding use for gas-fired electric generation, and the transportation market where natural gas vehicles can displace some traditional diesel- and gasoline-based vehicles. These actions will save consumers billions of dollars in related energy costs, reduce greenhouse gas emissions and enhance America's energy security by reducing our reliance on imported oil. Our industry can help meet America's need for clean and abundant energy by delivering more of America's fuel -- natural gas -- not just in 2011 but well into the future. Indeed, natural gas should now be considered a foundation fuel for the country.

Shale production grew from about 1 billion cubic feet (Bcf) per day in 2000 to about 15 Bcf per day by year-end 2010, thus forming nearly twenty-five percent of all domestic dry natural gas production. U.S. shale gas production is now spread between Appalachian states, the mid-continent, Texas, Louisiana, Arkansas and even the Michigan basin. The pipeline infrastructure is being expanded to accommodate large shale gas resources in the Northeast and other parts of

the nation. As shale production and the natural gas infrastructure grows to take advantage of this abundant resource, it must be done with a focus on safety. The AGA Board of Directors recently adopted principles for Responsible Natural Resource Development. These principles address a foundation for the sustainable and responsible development of all natural gas resources in our country and underscore the commitment of local natural gas utilities to the communities they serve. Not only will this significant production help to ensure a stable supply of natural gas, it will also provide new jobs. Estimates are that in the Marcellus Shale region alone in 2011, 122,000 new jobs will have been directly and indirectly created. All told, 2.8 million people are directly or indirectly employed by the natural gas industry.

INDUSTRY'S DEMONSTRATED COMMITMENT TO SAFETY

The industry has demonstrated that it can increase the delivery of natural gas while continuously making improvement in safety. The data from the Department of Transportation's Pipeline & Hazardous Materials Safety Administration (PHMSA) shows a continual downward trend in pipeline incidents of approximately 10% every three years. AGA has analyzed data from the PHMSA database and leaks, serious incidents, and significant incidents are continually being reduced.

Over the last twenty years, we have seen improvements in leak reduction (49%), as well as significant incidents (29%) and serious incidents (49%). But clearly more needs to be done. The tragic incident in San Bruno, California reminds us that one accident is one too many. The National Transportation Safety Board has not issued a final report on the San Bruno incident, but the industry is already taking away important lessons from the information that has been produced thus far in the extensive investigation. There are 210 documents with more than 6,000 pages of information in the NTSB docket. The factual reports show that the event appears to be an isolated incident with no evidence of national systemic safety problems.

The pipeline industry leadership has joined the Secretary of Transportation, Ray LaHood, in his call to action to repair, replace or rehabilitate the highest risk infrastructure. AGA member company CEOs met with Secretary LaHood in December 2010, in February 2011, and participated in the DOT Pipeline Safety Forum on April 18, 2011. We are also supporting the

Secretary's efforts to create a "Report to the Nation on Pipeline Safety." The leadership of AGA believes that commitment must start at the top in any organization or business. Our actions as leaders clearly demonstrate that we are fully committed to achieving the goal of improving pipeline safety.

AGA'S REVIEW OF THE DISCUSSION DRAFT BILL

AGA commends the committee for developing a solid bipartisan discussion draft bill for pipeline safety. Everyone has the common goal of continuing to have a safe, reliable and efficient national pipeline infrastructure. Congressmen, public utility commissioners, regulators, gas utility leaders, and utility hourly employees all agree that safety the top priority. AGA is generally supportive of the draft bill; however there are a few areas that we want to highlight, as they cause us concern.

Telephonic Notice of Certain Incidents

AGA is concerned that legislation requiring pipeline operators to make telephonic reports to the National Response Center (NRC) no later than one hour after discovery will cause thousands of unnecessary reports to be submitted. This will overburden emergency responders, regulators, and other parties that must respond to the NRC notifications. AGA believes Congress has a legitimate concern to ensure that there is prompt notification of pipeline incidents. The record shows that most incidents are indeed promptly reported. Operators are responsible for the operational response to incidents and coordination with their local emergency responders. Standard safety practices and the incident command structure deem that these tasks are given the highest priority. Once the preliminary extent of the situation is known and local action is initiated, operator personnel notify the NRC. Typically, the call to the NRC will be made in less than two hours. AGA does not believe calling the NRC should be given the same priority as local action with emergency responders. The real concern that AGA has with the proposed legislation is that a one hour maximum time limit will require operators to report minor events to the NRC before there is time to assess if an event meets the reporting threshold in 49 CFR 191.5. Prompt local emergency response and federal reporting are important issues. AGA believes that the DOT Secretary has the technical expertise to promulgate the appropriate regulation on this issue

that will balance the needs of all parties and to implement technically based notification requirements.

Automatic and Remotely-Controlled Shut-Off Valves

The benefit of an automatic shut-off valve (ASV) or remote-controlled valve (RCV) is the potential reduction in the amount of natural gas released after the incident has occurred. However, while both ASVs and RCVs may allow for a faster closure than a manually operated valve, they also introduce the possibility of a false valve closure, which can lead to unintended consequences. Nevertheless, AGA supports bill language which directs the Secretary to initiate rulemaking that will require the use of ASVs, RCVs or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced transmission pipelines constructed.

Expanding High Consequence Areas

It has been suggested that the Transmission Integrity Management Program (TIMP) be changed and expanded beyond the High Consequence Areas (HCA) defined in 49 USC 60109(a). AGA believes imprudent expansion would be contrary to the intent Congress had for the program, which was to focus resources on densely populated and environmentally sensitive areas where an accident could do the most damage.

All pipelines must comply with stringent state and federal safety standards even before the TIMP program is applied. As part of its regulation on TIMP, DOT has already included provisions for pipeline operators to have an added layer of protection on low-stress pipelines outside of HCAs. These provisions are known as Preventive and Mitigative (P&M) measures and are contained in Subpart O of the Federal Pipeline Safety Code. These P&M measures include enhanced protection against the threats of external and internal corrosion, as well as third party excavation damage. The TIMP program is relatively new, as the regulation was only finalized in December 2003, and the initial baseline assessment of all covered transmission pipelines will not be completed until December 2012.

AGA believes it is reasonable for Congress to direct the DOT to evaluate the effectiveness of the integrity management program no later than one year after completion of the baseline assessments. The study could include reviewing existing integrity management safety measures, including:

- comparisons of the relative benefits of expanding integrity management principles in a manner than emphasizes reducing risks for an increasing number of individuals living or working in close proximity to pipeline, versus an emphasis on expanding the number of pipeline miles covered absent such a risk evaluation.
- evaluating the need to undertake integrity assessments and repairs in a manner which is achievable and sustainable, without disruption of pipeline service.

RAISING THE BAR FOR SAFETY

How do we raise the bar on safety? First, we must keep our focus on key safety initiatives that are already underway and are showing success. This includes Distribution and Transmission Integrity Management, Control Room Management, public awareness, excavation damage prevention, and a number of voluntary initiatives such as AGA's Best Practices Program. Second, we have an opportunity to work together with state and federal regulators to further elevate pipeline safety through better excavation damage prevention programs and eliminating or severely reducing exemptions that currently allow entities not to call before they excavate, establishing a data quality committee to analyze DOT pipeline performance information, reducing hurdles that prevent operators from implementing new technology, requiring PHMSA to update obsolete material construction consensus standards that are currently incorporated by reference, and passing a pipeline safety bill that focuses on key areas that can truly improve pipeline safety.

DISTRIBUTION INTEGRITY MANAGEMENT

The 2006 PIPES Act required DOT to establish a regulation prescribing standards for integrity management programs for distribution pipeline operators. The DOT published the final rule establishing natural gas distribution integrity management program (DIMP) requirements on December 4, 2009. The effective date of the rule was February 12, 2010. Operators are given until August 2, 2011 to write and begin implementation of their individual risk-based program.

In 2003, PHMSA previously implemented integrity management regulations for hazardous liquid and gas transmission pipelines. Because there are significant differences between gas distribution, gas transmission and hazardous liquid pipelines, it would have been impractical to apply the existing hazardous liquid or gas transmission regulations to distribution pipelines. The DIMP rule incorporated the same basic principles as transmission integrity management regulations, but with a slightly different approach to accommodate differences between transmission and distribution systems. The DIMP final rule requires operators to develop and follow individualized integrity management (IM) programs, in addition to PHMSA's other current pipeline safety regulations.

The DIMP final rule is a comprehensive regulation that provides an added layer of protection to the already-strong pipeline safety programs implemented by local distribution companies. It represents the most significant rulemaking affecting natural gas distribution operators since the inception of the federal pipeline safety code in 1971. It will impact more than 1,300 operators, 2.1 million miles of piping, and 70 million customers. The final rule effectively takes into consideration the wide differences that exist between natural gas distribution operators. It also allows operators to develop a DIMP plan that is appropriate for the operating characteristics of their distribution delivery system and the customers that they serve.

The final rule requires that all distribution pipeline operators, regardless of size, implement an integrity management program that contains seven key elements:

1. Develop and implement a written integrity management plan.
2. Know its infrastructure.
3. Identify threats, both existing and of potential future importance.
4. Assess and prioritize risks.
5. Identify and implement appropriate measures to mitigate risks.
6. Measure performance, monitor results, and evaluate the effectiveness of its programs, making changes where needed.
7. Periodically report performance measures to its regulator.

Operators are aggressively implementing this rule. Workshops have been conducted throughout the nation. Webinars and audio conference have been held. Software programs have been developed specifically for distribution integrity management. The Gas Pipeline Technology Committee, comprised of federal and state regulators, pipeline operators, manufacturers, and the public, has developed a guidance document to implement the DIMP regulation. PHMSA and state regulators have completed pilot audits, created an audit form that has been shared with operators, and recently held webinars for hundreds of operators. I am pleased to inform the committee that all affected stakeholders are working to make this an effective regulation.

EXCESS FLOW VALVES (EFVS)

Natural gas utilities have been installing EFVs widely on single family residence service lines since the late 1990s, when operators were given the option of either installing them voluntarily or notifying customers of their availability, and then installing them upon request. The 2006 PIPES Act mandated that DOT require natural gas distribution utilities install an EFV on new and replacement service lines for single family residences, if the service line met specific conditions, beginning on June 1, 2008.

AGA supported the 2006 Congressional mandate for EFVs. Indeed, most operators were voluntarily installing EFVs before the June 2008 Congressional deadline. The DIMP final rule codified the congressional mandate to install EFVs in services to single-family residences. I do want to emphasize that Congress was absolutely correct in limiting the EFV mandate to single-family residential dwellings. Single family residence dwellings are very uniform and only about 15 percent of the dwellings have characteristics that prevent EFV installation (e.g. pressure too low, dirt, or contaminates in the gas).

However, due to the inherent uncertainties and complexities associated with service lines to multiple-family dwellings, commercial and industrial customers, it is inadvisable to attempt mandatory nation-wide installation of EFVs beyond the single-family residential class. Multifamily dwellings, commercial, and industrial customers are subject to significant variations in gas loads. Since EFVs are designed to shut down when there is a significant change in gas flow, these variations could result in the inadvertent closure of an EFV and interruption of gas

service for multiple days. An inadvertent EFV shutoff of commercial and industrial facilities, like hospitals or chemical plants, could potentially result in a greater safety hazard(s) than the release of gas the EFV was attempting to prevent.

Industry is committed to working with DOT on the use of new safety devices. It is appropriate that the proposed legislation has limited the rulemaking to excess flows valves or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced distribution branch services, multi-family facilities, and small commercial applications. However, the Secretary may need more time for rulemaking, given that small commercial services have yet to be defined and only one or two operators have ever used large volume EFVs.

ENHANCED SAFETY PRACTICES

As stated at the DOT Pipeline Safety Forum, operators can increase safety through:

- The exchange of best practices and the sharing of lessons learned from incidents and near misses,
- By working more closely with emergency responders and the public on natural gas safety and
- Collaborating with all stakeholders on key initiatives that have the ability to truly improve pipeline safety.

AGA has a comprehensive best practices program for its members and is exploring other ways to share practices and lessoned learned. In addition, AGA recommends that PHMSA establish a data quality team made up of representatives from government, industry and the public to analyze and improve upon the data collected by DOT and identify areas where the data tells us safety can be improved.

EXCAVATION DAMAGE PREVENTION

Excavation damage represents the single greatest threat to gas distribution system safety, reliability and integrity. A number of initiatives have helped to reduce excavation damage and resulting incidents. These include a new nationwide three digit number, "811", that excavators

can use to call before they dig, a nationwide education program promoting 811, "best practices" to reduce excavation damage and regional "Common Ground Alliances" that are focused on preventing excavation damage. Additionally, AGA and other partners have established April as National Safe Digging Month, encouraging individuals to dial 811 before embarking on any digging or excavation project. Since the "Call 811" campaign was launched, there has been approximately a 40 percent reduction in excavation-related incidents. A significant cause for this reduction is the work done by the pipeline industry in promoting the use of 811. Regulators, natural gas operators, and other stakeholders are continually working to improve excavation damage prevention programs.

AGA supports amendments to legislation that will require a state one-call program to have appropriate participation by all underground operators, including government entities; have mandatory participation by all excavators, including governments and contractors; have flexible and effective enforcement; and prohibit exemption of mechanized excavation, municipalities, State agencies or their contractors from one-call notification system requirements.

SUMMARY

In conclusion, the natural gas utility industry has a strong safety record. Recognizing the critical role that natural gas can and should play in meeting our nation's energy needs, we are committed to working with all stakeholders to improve. To that end, we applaud this committee's focus on moving pipeline safety act reauthorization forward. Passage of this important bill this year will help us all achieve a common goal: to enhance the safe delivery of this vital energy resource.

Mr. WHITFIELD. Thanks, Mr. Dippo.
Now, Mr. Pruessing, help me with your pronunciation.
Mr. PRUESSING. It is Pruessing.
Mr. WHITFIELD. You are recognized for 5 minutes.

STATEMENT OF GARY PRUESSING

Mr. PRUESSING. Chairman Whitfield, members of the subcommittee, last week I had the opportunity to discuss with your colleagues on the Subcommittee on Railroads, Pipelines, and Hazardous Materials the pipeline incident that occurred July 1 in the Yellowstone River in Montana. I appreciate the opportunity to do so again with you today.

Since I submitted my statement to the subcommittee last week, we have achieved additional progress in cleaning up the spill which I would like to update you on this morning. Before I begin, however, allow me to repeat our sincere apologies to the people of Montana. We deeply regret that this incident occurred and are steadfastly committed to not only complete the cleanup, but also to build the learnings from this incident into our future operations.

This requires, first, that we understand exactly what occurred. We do not yet know the precise cause of the apparent breach in the Silvertip pipeline and will not likely know until our investigation is complete. We do know that the pipeline had met all regulatory requirements, including a 2009 pipeline inspection and a December, 2010, depth-of-cover survey. Additionally, as recently as last month, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, or PHMSA, performed a field audit of the pipeline's Integrity Management Program.

Of course, we do know the effects of the incident. The pipeline lost pressure the night of July 1, and within 7 minutes our employees shut down the pumps. Shortly thereafter, we began closing the valves to isolate segments of the pipeline and minimize any release.

We estimate that no more than 1,000 barrels of oil spilled. We notified the National Response Center and immediately began implementing our emergency response plans, drawing upon our local resources at the ExxonMobil Billings refinery, as well as our experts from across the country.

A unified command center led by the Environmental Protection Agency and involving more than 780 people now directs the response. This coordinated effort, combining the resources of government, industry, and others, is crucial to effective cleanup and recovery.

I speak on behalf of our entire company in thanking the public servants at all levels of government and the volunteers from nongovernmental organizations contributing to the effort. This includes professionals from PHMSA, the Environmental Protection Agency, the U.S. Department of the Interior, the Montana Department of Environmental Quality, Montana Fish, Wildlife, and Parks, Yellowstone County Commissioners, local response organizations, International Bird Rescue, and many others.

As part of our cleanup strategy, we have divided the aerial down river of the spill into four zones. In the first two clean-up zones, covering a combined distance of approximately 19 miles, we have

deployed over 57,000 feet of boom, 277,000 absorbent pads, and several vacuum trucks, boats, and other equipment to capture oil. Our priority is to ensure that the cleanup is safe and effective, a task made more challenging by the persistent high water levels in the Yellowstone River.

On July 17th, we completed a 2-day procedure to remove any remaining crude oil from the Silvertip pipeline at the Yellowstone River crossing. The work was conducted under the direction and oversight EPA and the Montana Department of Environmental Quality. At the same time, through the unified command, we continue to conduct air and water quality monitoring of over 200 miles of the river as well as wildlife assessments and recovery efforts. To date, EPA monitoring confirms there is no danger to public health and no reported water system impacts.

We have also brought in recognized experts such as International Bird Rescue to actively monitor the impact on local wildlife. So far, impacts have been limited and small in number, and a list is available on our Web site. Monitoring and mitigating the impact of the spill on wildlife will remain a priority throughout the spill cleanup.

The Silvertip pipeline plays an important role in supplying energy to the Billings area and therefore helps sustain local jobs and economic growth. We are committed to replace the damaged pipe using horizontal directional drilling techniques with a new section that will lay approximately 30 feet below the riverbed, consistent with the PHMSA direction.

Of paramount concern to us is the impact on local communities. We established a community information line and have received more than 390 calls. About 170 of these calls are claims related to property, agriculture, and health; and we are actively responding to each one of these. We have also sent several teams door to door to visit approximately 250 residents in the most impacted areas. It is our goal to respond to individual concerns within 24 hours.

I am pleased to report that these outreach efforts have mostly received a very positive response. In fact, about 170 of the calls to the information line have been offers of help. This outpouring of local volunteer support is immensely helpful. It testifies to the resilience, industry, and generosity of the people of Montana; and we deeply appreciate their understanding and support.

To repeat, ExxonMobil Pipeline Company takes full responsibility for the incident and the cleanup, and we pledge to satisfy all legitimate claims. But even then our work will not be done. We are equally committed to learn from this incident and to build those learnings into our future operations.

Thank you.

[The prepared statement of Mr. Pruessing follows:]

Gary W. Pruessing
President, ExxonMobil Pipeline Company
U.S. House of Representatives
Subcommittee on Energy and Power
Hearing on the Pipeline Infrastructure and Community Protection Act
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Opening Statement

Chairman Whitfield, Ranking Member Rush, members of the subcommittee.

Yesterday, I had the opportunity to discuss with your colleagues on the Subcommittee on Railroads, Pipelines & Hazardous Materials the pipeline incident that occurred July 1 in the Yellowstone River in Montana, and to update them on the progress we have achieved to clean up the spill. I appreciate the opportunity to do so again with you today.

Before I begin, however, allow me to repeat our sincere apologies to the people of Montana. We deeply regret that this incident occurred, and are steadfastly committed to not only complete the cleanup, but also to build the learnings from this incident into our future operations.

This requires first that we understand exactly what occurred. We do not yet know the precise cause of the apparent breach in the Silvertip Pipeline – and will not likely know until our investigation is complete.

We do know that the pipeline had met all regulatory requirements, including a 2009 pipeline inspection and a December 2010 depth-of-cover survey. Additionally, as recently as last month, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) performed a field audit of the pipeline's integrity management program.

And, of course, we do know the effects of the incident. The pipeline lost pressure the night of July 1, and within seven minutes, our employees shut down the pumps. Shortly thereafter, we began closing valves to isolate segments of the pipeline and minimize any release. We estimate that no more than 1,000 barrels of oil spilled.

We notified the National Response Center and immediately began implementing our emergency response plans, drawing upon our local resources at the ExxonMobil Billings Refinery as well as our experts from across the country. A Unified Command Center led by the Environmental Protection Agency and involving more than 750 people now directs the response.

This coordinated effort, combining the resources and expertise of government, industry, and others, is crucial to effective cleanup and recovery. I speak on behalf of our entire company in thanking the public servants at all levels of government and the volunteers from non-governmental organizations contributing to this effort.

This includes professionals from PHMSA, the Environmental Protection Agency, the U.S. Department of the Interior, the Montana Department of Environmental Quality, Montana Fish, Wildlife and Parks, Yellowstone County supervisors and commissioners, local response organizations, International Bird Rescue and many others.

As part of our cleanup strategy we have divided the area downriver of the spill into four zones. In the first two cleanup zones, covering a combined distance of about 19 miles, we have deployed approximately 46,000 feet of boom, 260,000 absorbent pads, and several vacuum trucks, boats and other equipment to capture oil. Our priority is to ensure the cleanup is safe and effective – a task made more challenging by the persistent high water levels in the Yellowstone River.

At the same time, through the Unified Command, we continue to conduct air and water quality monitoring of over 200 miles of the river, as well as wildlife assessments and recovery efforts. To date, EPA monitoring confirms there is no danger to public health, and no reported water system impacts.

We have also brought in recognized experts, such as International Bird Rescue, to actively monitor the impact on local wildlife. So far, impacts have been limited and small in number, and a list is available on our website. Monitoring and mitigating the impact of the spill on wildlife will remain a priority of ours throughout the cleanup.

The Silvertip Pipeline plays an important role in supplying energy to the Billings area, and therefore helps sustain local jobs and economic growth. We are committed to replace the damaged pipe, using horizontal directional drilling techniques, with a new section that we will lay approximately 30 feet below the river bed, consistent with PHMSA direction.

Of paramount concern to us is the impact on local communities. We established a community information line, and have received approximately 350 calls. More than 140 of these calls are claims related to property, agriculture and health, and we are actively responding to each of these. We have also sent several teams door-to-door to visit approximately 250 residents in the most impacted areas. It is our goal to respond to individual concerns within 24 hours.

I am pleased to report that these outreach efforts have mostly received a very positive response. In fact, more than 140 calls to the information line have been offers of help. This outpouring of local volunteer support is immensely helpful. It testifies to the resilience, industry and generosity of the people of Montana. We deeply appreciate their understanding and support.

To repeat, ExxonMobil Pipeline Company takes full responsibility for the incident and the cleanup, and we pledge to satisfy all legitimate claims.

But even then, our work will not be done. We are equally committed to learn from this incident and to build those learnings into our future operations. Thank you.

Mr. WHITFIELD. Mr. Pruessing, thank you; and I thank the panel for your testimony.

I will recognize myself now for 5 minutes of questions.

The discussion draft of the bill states that notice should be given to the National Response Center at the earliest practical moment following discovery of a release of gas or hazardous liquid and not later than 1 hour following the time of discovery. Now, some of you made reference to that notification requirement, and we know that when you pass legislation it is not unusual that sometimes you end up in courts and then trying to define what it actually means.

I would just ask each of you to comment briefly on what does this mean to you: 1 hour after an operator sees the sign. Does it mean something out of the ordinary, or 1 hour after confirmation, or is there any ambiguity from your perspective and how could we improve it in any way?

Mr. Black.

Mr. BLACK. We understand that to apply 1 hour after confirmation of discovery. Right now, it is earliest practicable moment in the regulations right now. PHMSA interprets that as about 1 to 2 hours, and I believe when the administrator was here she didn't suggest a change was needed. But if you do do it, we interpret that as 1 hour after confirmation of discovery.

Mr. WHITFIELD. Mr. Martin?

Mr. MARTIN. Yes, that is the same for us. One hour after time of discovery is what we would interpret that to be.

Mr. WHITFIELD. Mr. Kessler?

Mr. KESSLER. I think, generally, I would be in agreement.

Mr. WHITFIELD. OK. Mr. Dippo?

Mr. DIPPO. That is correct. We would also agree.

The concern with the natural gas distribution industry, though, of course, is that there are releases almost every day relative to struck mains and services, and our concern would be how this would impact the overloading of the NRC.

Mr. WHITFIELD. Mr. Pruessing?

Mr. PRUESSING. We agree. It is 1 hour after confirmation.

Mr. WHITFIELD. OK. All right.

Now, last week, Congresswoman Speier testified, and she addressed this grandfather pipeline issue that one or two of you mentioned in your testimony. I would ask what is needed to confirm the maximum allowable operating pressure for those pipelines constructed before the 1970 pipeline safety regulations were implemented? Do you support the Senate provision on this issue?

Mr. Black?

Mr. BLACK. The Senate provision did not cover hazardous liquid pipelines. There is not the equivalent grandfathering issue.

Mr. WHITFIELD. Mr. Martin?

Mr. MARTIN. INGAA members commit to a systematic validation of records and the maximum allowable operating pressure in their pipelines in the highly populated areas.

Mr. WHITFIELD. Mr. Kessler?

Mr. KESSLER. The situation was that there wasn't an accurate record of the pipe in the ground, and all regulators regulate to the record, not so much the actual physical properties. So we do strongly support the Senate provision. We think it is reasonable.

Mr. WHITFIELD. OK. Mr. Dippo?

Mr. DIPPO. Yes. The concern is, of course, that a one-size-fits-all approach to the maximum allowable operating pressure is it does not work for the natural gas distribution utility industry. We do believe that, in terms of the records validation, that all operators should be doing that with their facilities. But we are reluctant to get involved with validating MOP through hydrostatic testing of lines that are in service.

Mr. WHITFIELD. Mr. Pruessing?

Mr. PRUESSING. ExxonMobil Pipeline operates liquid pipelines, so, as Mr. Black said, there is no grandfathering for the liquid lines.

Mr. WHITFIELD. OK. Now, the National Association of State Pipeline Self-Regulators, when they testified, addressed redundancy between class location requirements and integrity management. Can you all elaborate on where these redundancies exist and where they do not? Mr. Black?

Mr. BLACK. It is not a liquids issue, just gas.

Mr. WHITFIELD. OK. Mr. Martin?

Mr. MARTIN. Yes, for the gas pipelines, what we were talking about, class location requirements are embedded throughout the regulations, from design, construction, operation, and maintenance; and the focus we were talking about with the Integrity Management Program that went into place back in 2003, that is really on the area of operation and maintenance. And where we see the overlap is we are collecting a tremendous amount of information in the new regulation and requirements and evaluating the risks and the threats associated with our pipelines and taking the appropriate action, where the existing class location requirements simply state in some cases you must just change out the pipe without looking at all this information.

So getting back to the cost-benefit analysis that was done back in the 2003 evaluation, that was the $1 billion savings they were talking about, is the redundancy related to the new requirements versus changing out the pipe. We think those dollars, those safety resources, ought to be expended elsewhere in our programs, even if we are talking about expanding the HCAs beyond the existing requirements today. Those are resources that could be used to do that more effectively.

Mr. WHITFIELD. Mr. Kessler?

Mr. KESSLER. Looking at redundancies is something we support in that area, but, again, we believe this has to be coupled with—you cannot disassociate that from other regulations, particularly the Integrity Management Program. So you really can't move one block without affecting the other. So you need to do both together.

Mr. WHITFIELD. OK. Mr. Dippo?

Mr. DIPPO. Yes, I would agree with Mr. Martin's position that there is duplication in the regulation. In fact, a transmission pipe operated by a local distribution company is covered both by transmission integrity management and distribution integrity management. We feel DOT needs to study this inefficient duplication.

Mr. WHITFIELD. Do you have any comment, Mr. Pruessing?

Mr. PRUESSING. No.

Mr. WHITFIELD. OK. At this time, I would like to recognize the gentleman from Michigan, Mr. Dingell, for 5 minutes of questions.

Mr. DINGELL. Mr. Chairman, you are most kind. I commend you for this hearing.

I would like to welcome our panel, particularly my old friend Rick Kessler, who has been in this room before, as you will well recall. I would like to direct this question first to Mr. Kessler.

Normally, the standard for criminal violation is knowingly or willfully violating the law. In the current pipeline safety statute, the standard for criminal penalties is knowingly and willfully. That appears to me to be an unusually high standard to meet. The bill proposes to extend the standard of knowingly and willfully to civil penalties. Is that right?

Mr. KESSLER. It does propose to do that, in part.

Mr. DINGELL. It makes it very hard to reach civil penalties and apply them to serious misbehavior, does it not?

Mr. KESSLER. It does, Mr. Dingell. In fact, to our knowledge, the knowingly and willfully standard currently in law has only successfully been applied once, and that was in the Bellingham situation.

Mr. DINGELL. Mr. Kessler, section 18 of the draft deals with waivers from the law. The discussion draft has only two items the Secretary must consider in granting a waiver: one, the applicant's compliance history; and, two, the applicant's accident history. I am concerned this may preclude the Secretary from considering other information, such as whether the pipeline runs through a wildlife refuge or other environmentally sensitive areas like a national park or something of that kind. The Senate version of this legislation contains a clause which allows the Secretary to consider any information or data the Secretary considers relevant.

Now, Mr. Kessler, yes or no, do you believe the Secretary needs additional authority to ensure that these waivers are issued properly? Yes or no.

Mr. KESSLER. Yes.

Mr. DINGELL. Now, Mr. Kessler, do you believe that the provision in section 17 dealing with cost recovery for design reviews at PHMAS would allow PHMSA to generate significant cost recovery? Yes or no.

Mr. KESSLER. Not as currently structured, sir.

Mr. DINGELL. Should it?

Mr. KESSLER. Yes, sir.

Mr. DINGELL. Now, for the rest of the witnesses, starting with you, Mr. Black, how many projects have your groups had in recent years that cost more than $4 billion?

Mr. BLACK. I don't know of any, but I don't have that data.

Mr. DINGELL. Would you submit that for the record? As a matter of fact, would our other panel members please do that?

Now, section 5 of the draft bill requires automatic or remote shutoff valves where technically, operationally, and economically feasible on new—and I emphasize the word "new"—pipeline.

Starting with you, Mr. Black, yes or no, is this something the industry is doing already? Yes or no.

Mr. BLACK. On new construction, yes.

Mr. DINGELL. Mr. Martin?

Mr. MARTIN. On new construction, yes.

Mr. DINGELL. Mr. Kessler?

Mr. KESSLER. As far as I know, on new construction, yes.

Mr. DINGELL. Mr. Dippo?

Mr. DIPPO. Yes, both on new construction and on existing.

Mr. DINGELL. And our last witness?

Mr. PRUESSING. To my knowledge, yes.

Mr. DINGELL. Now, you all know about the recent San Bruno explosion which resulted in eight deaths and the destruction of 38 homes. It took PG&E 90 minutes to manually shut off the valve, resulting in some 35 million additional cubic feet of gas being released. I seem to remember this was subject to debate some 15 years ago, and I would note that action has not been taken on this problem, which appears to continue to exist.

Now, question: If the San Bruno pipeline had an automatic or remote shutoff valve, would this have reduced the amount of damage caused by the accident? Yes or no. Starting with you, Mr. Black, please.

Mr. BLACK. It could have, yes.

Mr. DINGELL. Mr. Martin.

Mr. MARTIN. I believe it could have reduced it, yes, but I think there still would have been the issue of the gas escaping from the pipeline after they were closed.

Mr. DINGELL. Mr. Kessler.

Mr. KESSLER. We believe it definitely would have, just as it would have in Edison, New Jersey, 15 years earlier.

Mr. DINGELL. The next witness?

Mr. DIPPO. Yes, anytime the valves are shut quicker would reduce the amount of damage.

Mr. DINGELL. Mr. Pruessing?

Mr. PRUESSING. We only operate liquid lines, so I am not in a position to speak to the gas systems.

Mr. DINGELL. Mr. Chairman, I have completed my time, and I thank you for your courtesy.

Mr. WHITFIELD. Thank you, Mr. Dingell.

At this time, I recognize the chairman of the full committee, Mr. Upton, for 5 minutes.

Mr. UPTON. Thank you, Mr. Chairman.

Again, I want to thank the panel for coming back because we had votes last week. So I appreciate your adjusting your schedules to be able to be here this morning.

I have actually a couple of questions.

Mr. Pruessing, there was a story in today's USA Today and some other publications as well that said Federal inspectors found a problem in the oil pipeline a month before it ruptured in a Montana river, but it was not significant enough to force a shutdown, the government's top pipeline regulator said on Wednesday.

Was this rupture—was this problem anywhere close to the place where it actually ruptured or not? Can you tell us a little bit about this?

Mr. PRUESSING. Those of us that are in the industry understand that pipe is manufactured to a certain specification, and there is a certain tolerance around that pipe. It is not unusual to find some small variations in the thickness of a pipe.

When we did our inspection in this line in 2004 and again in 2009, we identified one small area of a pipe that was slightly thinner. Again, over that period 2004 to 2009, that had not changed. It is likely an original fabrication issue and certainly was within tolerance. It did not affect the performance of the pipe, and it did not require it to be addressed under the regulations. At this point in time, we have no reason to believe it had anything to do with this incident.

Mr. UPTON. OK. I only have a limited time. That is good. I appreciate your answer.

I want to go back to Mr. Dingell's question but expand it a little bit as regards to automatic shutoff valves in high-consequence areas. We had a little of that testimony by our colleague last week, which I think all of you heard, and that is the question as to retrofitting these pipelines in high-consequence areas. We all liked the answer—I think it is in the bill—that any new pipeline has to have this type of equipment.

But let's talk about retrofitting literally the tens of thousands of miles of oil and gas pipelines with automatic shutoff valves. What are the costs? What percentage of the pipelines could be viewed as high-consequence areas and how far apart do they have to be if we looked at the issue of retrofitting?

Mr. Black, and we will just go down the line.

Mr. BLACK. First, operators are required right now to consider the use of remote operate and automatic shutoff valves in high-consequence areas, and that analysis and decision is available to PHMSA for inspection and audit. So there is a requirement for this review right now. And often these valves are used upstream at a river crossing.

But retrofitting, CRS has looked at this issue, and on new construction, which is cheaper, they said it can be in the hundreds of thousands, potentially even more millions of dollars. When you think about 170,000 lines of liquid miles, that is tremendously more expensive. Liquid lines don't get compressed. What is important is to shut off the pumps and then close the valves and try to isolate it.

But they do analysis right now on the drain-down and determine where those valves should be. There is not a specific mileage. It should be site specific, and it is today.

Mr. UPTON. As I recall, one of my questions last week was, do we know what percentage of the pipelines already have this type of equipment on them, and the answer was they did not know. I will maybe add to that my question as we go down the line.

Mr. BLACK. I am not aware of that data. Forty-four percent of the liquid lines are in high-consequence areas, so for that 44 percent this determination is required. But I don't have that information. I am not sure if PHMSA does either.

Mr. MARTIN. For the interstate natural gas system, 6 percent of our mileage are in HCAs. So that is the mileage for the interstate system.

Much as Mr. Black said, when we do the Integrity Management Program, we do the evaluation on the valves as well. On new construction, that is something that is looked at for automatic or remote control valves.

As far as retrofitting existing valves or going beyond HCAs, that is something that we are looking at right now. But I don't have a cost figure for you for that. It would vary, based on the pipeline, the location, availability for power and so forth in there for some of these valve operators.

Mr. KESSLER. Mr. Chairman, we believe that there should be a requirement that these be used where technically and economically feasible, particularly in high-consequence areas. I think that is the most important aspect to cover. We are not saying—this should be a risk-based type of approach to retrofitting. We recognize that this is costly, which is why we would agree that technically and economically feasible is a good standard.

Mr. DIPPO. Yes, Mr. Chairman. I would just indicate that AGA members have—there is a provision, as Mr. Black indicated, in the code for adding these additional levels of protection for high-consequence areas in terms of retrofitting valves for automatic or remote operation. So the costs are very site specific, and the spacing would also be very site specific.

But, as Mr. Kessler had testified earlier, our biggest concern would be the entire cost. For AGA members, we have estimated that would be over $13 billion to go back and completely retrofit, and our concern would be how that funding requirement takes away from other fitness-for-service requirements such as bare steel or cast iron replacement programs.

Mr. UPTON. I know my time has expired, but if you might provide that information in terms of how you calculated the $13 billion to the committee, that would be great. Thank you.

Mr. DIPPO. Yes.

Mr. UPTON. Mr. Pruessing.

Mr. PRUESSING. We already have a number of remotely controlled valves along all of our pipelines, and we actually used those to isolate this line that we recently talked about.

In liquid systems, automatic shutoff valves are a bit of an issue because of the large mass you have, and you can actually over-pressure a line if you slam a valve closed too quickly. So automatic shutoffs are a concern about liquid systems, but certainly remotely operated valves are something that are used broadly already.

Mr. UPTON. Thank you.

Mr. WHITFIELD. Mr. Green, you are recognized for 5 minutes of questioning.

Mr. GREEN. Thank you, Mr. Chairman; and thank you for extending the hearing. I know we had it last week, and even 5 minutes is not enough because most of you know where I come from pipelines are just part of our daily life. I have so many questions, we will probably submit some in writing.

Mr. Black, I believe you advocated for taking significant care when considering the regulation of offshore gathering pipelines. Onshore are not currently regulated gathering pipelines.

Mr. BLACK. They absolutely are, by States.

Mr. GREEN. By States. Do they have any Federal standards at all? Or is there some continuity between Federal standards for pipelines and what typically the States would have in Texas, as an example, or Louisiana or Oklahoma would have, a significant amount of gathering pipelines?

Mr. BLACK. I can't speak to that. A lot of gathering is affiliated with production, and we are representing transmission pipelines.

Mr. GREEN. Would the situation with Exxon in Montana, would that be considered a gathering line?

Mr. BLACK. No, that was a transmission line.

Mr. GREEN. An actual transmission line from the field to the refinery.

Can you tell me about your concern about offshore regulation of the gathering pipelines?

Mr. BLACK. Sure. For decades, the law by Congress has been that this is regulated by States. If it is only offshore, it is subject to the Federal lands agency there. We haven't seen the evidence that the regulatory framework has to be changed.

You are well aware of the hurricanes that have come through in the last decade or so, and the pipeline network has proven itself quite resilient there. There is a study in the bill, and we don't oppose that study. We think it will find that the current regulator framework works.

Mr. GREEN. OK. Let me ask the total panel for thoughts on the 1-hour notification. I guess I have concern about the definition, because, as Mr. Dippo talked about, there are some releases that are very brief and I would call them a leak if they were liquid as compared to a rupture. Is there a difference in the 1-hour notification or an hour notification if you discover there is a rupture as compared to just a leak that you can repair very quickly?

Mr. BLACK. Well, operators know the rules. They know what types of events need to be reported. If—well, we have been talking about improving the reporting procedures to try to facilitate prompt discoveries. We think going to 1 hour without those particularly could facilitate false alarms.

But to answer your question directly, there is a specific understanding of what types of events need to be reported quickly and what do not, because they are small, like you say.

Mr. GREEN. In the report to the National Response Center, does that trigger some type of national Federal response? Because, in all honesty, most of the immediate response is from the pipeline owner and their resources and also the local EMS and the first responders locally.

Mr. BLACK. We think the National Response Center process is a good one. It is one call for the operator to make, and the National Response Center notifies all of the local and Federal agencies and first responders along the right-of-way that need to be known. The Senate bill somehow confuses this and might place the requirement of an operator to notify State and local responders. We think the important thing is to get, as this committee did, get one call made to that National Response Center, as is done now.

Mr. GREEN. And the responsibility of the National Response Center would also be the network that they have on the State level?

Mr. BLACK. They know who to call, depending on the issue and where it is.

Mr. GREEN. OK. In the current regulation concerning notification, obviously, you feel like it is preferable. Is there anything else we could do, any suggestions, including Mr. Kessler, on the difference between the 1 hour and the current requirement?

Mr. KESSLER. A little confusion here I think is that the bill language, much like the committee-passed and House-passed legislation last year on this subject, does reference and take as its baseline the existing regulation. So if you are getting false alarms, if you are going to get false alarms after we move the reporting requirement up to an hour, those are the same false alarms you are getting now. That is not going to change. What is going to change is the timeframe and also how you report these things, which is something industry had asked for, how you categorize them.

Mr. GREEN. Mr. Pruessing, you said—and I have to go back to your testimony—but Exxon actually notified the National Response Center within the hour, or within an hour?

Mr. PRUESSING. When we actually had identified we had a leak and identified where that was, we had called the National Response Center within 34 minutes of that time.

Mr. GREEN. OK. So you fit the newer standard at least for liquid pipeline, and I understand there is a substantial difference between natural gas and liquids.

Mr. PRUESSING. Yes.

Mr. GREEN. Mr. Dippo, this is just for my own reference. South Jersey gas distribution, in your testimony you talked about the additional discovery of natural gas. Are you actually receiving natural gas from some of the shale plays that we see in West Virginia and Pennsylvania?

Mr. DIPPO. Yes, sir.

Mr. GREEN. I guess because we have heard in the last few weeks some concern about our shale plays being a little over-dramatized in the success of them, but we are actually cooling homes, I assume, in New Jersey today with that natural gas.

Mr. DIPPO. Yes, sir. Cooling and heating, of course.

Mr. GREEN. Thank you, Mr. Chairman. Obviously, 5 minutes for a Texan is not long enough.

Mr. WHITFIELD. Thank you, Mr. Green.

Mr. Olson, you are recognized for 5 minutes.

Mr. OLSON. I thank the chair. We are going to have the Texas run here, it looks like. My colleague after me is going to be another one from Texas.

I want to thank the panel today for coming back, for your patience, your expertise, and your perspectives.

At the last hearing, I made a statement that no member cares more about pipeline safety than the one who represents the 22nd Congressional District of Texas. That is me. And since a picture is worth 1,000 words, I have brought little pictures for you all today.

The first one here is a PHMSA product. This is the pipeline system in Harris County, Texas. The little red Post-It note down here is where I grew up, and the one on the right side of the chart is where I live now and where I am raising my family. Those of you who have been to Houston rush hour may not believe it, but the gold lines are the transportation infrastructure for cars and trucks. The red and the blue lines are the transportation and infrastructure for our petrochemical industries. The blue lines are gas transmission pipelines. The red lines are hazardous liquid pipelines.

Focusing a little more on the area right over here in southeastern Harris County, you might know what that is. Bearing

down a little, this is the pipeline infrastructure that supports the Port of Houston. It is the Nation's most busiest port in terms of foreign tonnage. Again, Harris County is the third most populous county in the country. Houston is the third most populous city. The place where I grew up is right there. So you can see how important this pipeline infrastructure, having a safe infrastructure, is to the people of the greater Houston area and also to our economy.

I just want to invite any of my colleagues, if you want to come down and see a pipeline infrastructure firsthand, give me a call. I am happy to take you down there and take you around and show you how it really works down there.

I just have a couple of questions for you, and this is for Mr. Martin and Mr. Black. The discussion draft proposes that automatic and remotely controlled shutoff valves be mandated for pipelines that are constructed or entirely replaced, and Mr. Reamer testified that these valves should be placed in all high-consequence areas.

Do you have a sense of what this sort of retrofitting will cost—a couple of questions—if it is feasible? And then just one example. There is a great company in the district I represent, in the greater Houston area, Spectra Energy. I toured their facility. They have incredible remote-sensing valves all throughout their pipeline going up to the northern and eastern part of the United States. Would they be asked to somehow retrofit the current system they have got there, or would they be held to some sort of new standards?

Do you have any sense of what would happen to companies who already have got a tremendous system that can guarantee that the flow from some sort of drop in pressure will be shut off, nothing will escape for the next 15 minutes, something that would have been very beneficial out in California?

Mr. MARTIN. I would just say on the automatic and remote, I think there are some applications, that it is appropriate to have those installed, and I think that is what we are proposing to look at, is doing a study. Where it is technically and economically feasible to install those, those should be looked at, focusing on the high-consequence areas. That is obviously where you would want to focus your time and your resources on. So that is something that the INGAA companies are looking at and certainly support as far as the bill goes.

As far as costs, we have talked about that. There are so many variables in there about what the actual costs would be that I couldn't give you a number now. We really would have to look at that in some great detail to determine what some sort of cost would be for those. But that is certainly a significant consideration that has to be given for any requirement to do that on a broad basis.

Mr. OLVER. Mr. Black, anything you want to add?

Mr. BLACK. On liquid lines, remote-controlled valves are used pursuant to a risk and engineering analysis that is required in high-consequence areas and elsewhere. You will see them used. They are prevalent on new construction.

These can be costly. You have got the valve itself, the dig, the lost use of the assets. Whoever is getting the product from you doesn't get it during that time. And then, as Mr. Martin said, the cost of bringing power and communications there just increase it.

We don't have specific costs, because these are costs determined by the location and the use. But in retrofits they are much more expensive, and we think on existing high-consequence area lines there is not a gap. That determination is required.

Mr. OLSON. I see that I have used up the balance of my time. Again, I would like to extend, if anybody here on the panel or any member of this committee would like to get out of the D.C. heat and trade it for the Houston heat, cooler, come on down. I will help you out.

I yield back.

Mr. WHITFIELD. We will let you know about that, Mr. Olson.

Mr. Gonzales, you are recognized for 5 minutes.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

Again, I also want to wish to thank the panel and seeing Mr. Kessler here today, but especially for the delay, just the way things happen around here.

I am glad, I think Mr. Dippo pointed out, just to put things in perspective, if you are looking at 2.5 million miles of pipeline that are carrying natural gas, hazardous liquids, and crude oil throughout this country, compare it to basically any federally funded or any highway that receives any Federal funds—and that is just about every road out there—would only comprise half that amount, about 994,000 miles. So you can imagine what is underground and such that needs to be regulated and inspected for many, many reasons.

Yet we did have Administrator Quarterman here last week, and I think—I didn't write it down, maybe my colleagues would remember—but I think she said PHMSA has maybe 500 employees, 200 that are assigned to pipeline safety and such. So we understand the partnership that is absolutely necessary by the enormity of the challenge, and that is you have got to have, obviously, industry but all of your State officials and regulators. So whatever standard we set here, we are really passing it off to be executed by others. I think that is the greatest challenge.

I am going to start off with oil, and the reason for that is just looking into the future and where we are and hopefully increasing domestic production. But, presently, we import 1,930,000 barrels per day of crude from Canada, followed by Mexico, 1,140,000, and then Saudi Arabia, 1,080,000.

I would ask Mr. Pruessing and I believe Mr. Black, my oil guys, what is the special challenge of the Canadian crude, and that is tar sand crude, that it presents in the way of pipelines and moving it through the pipelines? And, again, any additional challenges, things we need to be preparing for, things that are or are not adequately addressed under the present regulatory scheme? Mr. Black?

Mr. BLACK. When diluted bitumen or oil sands crude is moved through a pipeline, it is just like every other heavy crude from California or Venezuela. No special corrosion risk. There is a study. It is in this discussion draft.

Mr. GONZALEZ. But to get it to flow does take a process, doesn't it? It is diluted. What is that process?

Mr. BLACK. They mix the bitumen with a condensate that is part of the natural gas processing and convert it into diluted bitumen. That is one way to process oil sands crude.

That is not really a concern. The concern for us accessing western Canadian crude is just increasing pipeline takeaway capacity. A lot of that crude is stranded right now, and the market is calling for more access to it.

Mr. GONZALEZ. Mr. Pruessing.

Mr. PRUESSING. The technology is actually well established. We have been running heavy crudes in the industry for a very long time; and, as Mr. Black has indicated, these heavy crudes just need to be diluted so they can be pumped.

Mr. GONZALEZ. Now I want to ask Mr. Kessler and then—off of Mr. Kessler's questioning regarding it is going to be a new category. I think Mr. Dingell also touched on major consequent violations for on the civil side. And I agree with Mr. Dingell. I don't understand why the standard, if it is going to be of major consequence, that you just have a knowingly standard. Because I would imagine that much happens as a result of negligence. And so—but what is the logic? What would be the reasoning, as you see it, to create a major consequence violation category under civil and then have a standard that really applies to criminal prosecution when it comes to the willful and knowingly.

Mr. KESSLER. I see none. As I said, the provision in current law of knowingly and willfully is an aberration because it is generally knowingly or willfully. And the standard has only been successfully prosecuted once with Bellingham. And then to put it in a civil penalty section, I have just never seen it. I don't—I believe the chair and others who came up with the proposal are trying to do something good here, but I think the standard is misplaced as well as intentionally. Those are all things that generally apply to criminal. They get to state of mind, not negligence or gross negligence.

Mr. GONZALEZ. My time is up, so I thank everyone.

I yield back, Mr. Chairman. Thank you.

Mr. WHITFIELD. We appreciate you all raising that issue on the standard on the civil penalties. A number of people on both sides of the aisle have expressed concern about that, and we appreciate you all mentioning that.

Mr. Pompeo, you are recognized for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman. I am close enough I am not sure I need this.

One of the things—I am new to all of this. One of things I see done in the regulatory environment is we just keep adding standards, and I understand we want to continue to improve safety where we can. I know industry wants that, too.

Mr. Kessler, I am interested, it sounds like you have a history on this committee and the issue is pretty deep. Is there anything in this piece of legislation or in the existing rules that you would say, yes, that doesn't make sense anymore, we are driving costs, we are forcing pipeline distribution companies, these folks, to spend money, and it no longer makes sense? We can either let them not spend the money or spend it more effectively on safety someplace else?

Mr. KESSLER. Absolutely. As I alluded to earlier, I think if you couple the repeal of redundant or unnecessary class location with expanded protections, integrity management, then, yes, that is something that you should be getting rid of, but it has to be done in context.

Also, similarly, I think some of the—I lost my train of thought. I am sure there are things. This is a statute that is kind of all over the place. It always has been. It has always been a desire, I think, of the members of this committee to make it make more sense, which a good thing.

So I think there are some things in the bill. One thing I think was inadvertent in the bill—and this isn't our issue—but you asked a question that gives PHMSA arrest authority, and I think that probably doesn't make sense. It is a nice sentiment, I think leftover from days when the Coast Guard was at DOT, but probably—PHMSA's never been a law enforcement agency.

Mr. POMPEO. Gotcha. Thank you.

For Mr. Black and Mr. Dippo, you came through with various things that you would like to see changed. If you were to prioritize and say, hey, here is the most important thing I would like you all to go back and look at. Seriously, can you kind of—I cut the list, but could you prioritize and say, here are the two things I think are most critical that I think you need to go revisit from this draft legislation.

Mr. BLACK. I think two of the most costly things that could be done in this industry and reauthorization is a leak detection standard without knowing what PHMSA would do and then some retrofit requirement for remote control valves beyond what is considered today. You don't have the remote control valves issue unsatisfactorily to us in the draft, but you do require a leak detection rulemaking before even PHMSA has completed a study and concluded one is necessary. So that would be our top priority.

Mr. DIPPO. Yes, and our concerns would be expansion of the transmission integrity management regulations beyond the current high-consequence areas, particularly before PHMSA has had the opportunity to review the effectiveness of the existing program, which is not scheduled to have baseline assessments completed before 2012.

And then, of course, the concern about the extreme costs associated with retrofitting existing valves for automatic or remote-controlled actuation in high-consequence areas and the effect that that may have on pulling funding away from other replacement programs that we are involved in.

Mr. POMPEO. Great, thanks.

I have just got 1 more minute. Mr. Dingell asked Mr. Kessler about Section 19, the waiver provisions, where there is just two considerations. I don't think anyone else had a chance to chance to speak to that. It just gives two things that the administrator can consider in Section 18 when granting special permits. Did anyone else have a view?

Mr. Kessler's view was there ought to be potentially other things that the administrator could consider. Anybody else have a view of if we got it right?

Mr. BLACK. Well, S. 275 section on special permits we thought gave PHMSA the authority to be subjective rather than objective on special permit applications. I haven't seen a proposal like Mr. Kessler is talking about, about additional contextual information. We think risk of the special permit proposal should absolutely factor into the decision. Where we want S. 275 to improve is make sure the Secretary and the administrator are using objective information.

Mr. POMPEO. You want to know what you are up against.

Mr. MARTIN. I don't have any additions.

Mr. KESSLER. I think Mr. Black makes a good point. I mean, there does need to be certainty for industry. It is just that if a gas pipeline goes through an earthquake zone, high-density population area, in granting a waiver for that segment you should look at that, or an oil pipeline through a national park or refuge. So we are saying those should be enumerated, and the industry does deserve certainty on these things.

Mr. POMPEO. Thank you. Thank you all.

I yield back.

Mr. WHITFIELD. Thank you.

At this time, I recognize the gentleman from Illinois, Mr. Rush, for 5 minutes.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. Kessler, in our last hearing on pipeline safety we discussed the issue of transporting diluted bitumen such as the type of Canadian crude Keystone XL pipeline carried through the middle of the country if it is approved. The discussion draft calls for a say on this subject, but it doesn't take the next step of requiring PHMSA to update its regulations. The study shows there is an increased risk when transporting diluted bitumen.

In your opinion, do you believe that this discussion draft goes far enough in ensuring that we will have the necessary procedures and mechanisms in place to safely transport diluted bitumen through the heart of the country, or do you believe that there are additional steps that we can include in this bill to ensure that we are being proactive and taking every precaution on this subject?

Mr. KESSLER. Thank you, Mr. Rush.

We do support the study in the bill and would support that, whatever recommendations are made from that, that they be implemented. We don't take a position on the oil sands, tar sands bitumen itself, but we do believe there are unique characteristics that must be addressed and engineered, too. We have seen something like a dozen leaks from the XL pipeline in the last year, and this can be and should be addressed. It is something that we are right to study, and then PHMSA should take the necessary steps based on that study.

Mr. RUSH. I want to divert my questions to another matter that are very seldom discussed in these type of hearings. I just want to ask Mr. Black, you represent the Association of Oil Pipe Lines and also on behalf of the American Petroleum Institute?

Mr. BLACK. Yes, sir.

Mr. RUSH. How many minority contractors are members of the Association of Oil Pipe Lines?

Mr. BLACK. Could you repeat your question?

Mr. RUSH. How many minority or women-owned businesses are members of the Association of Oil Pipe Lines?

Mr. BLACK. I don't have that information.

Mr. RUSH. Can you get it to me?

Mr. BLACK. Yes, sir.

Mr. RUSH. The same on the American Petroleum Institute.

Mr. BLACK. I will be happy to ask for that.

Mr. RUSH. Mr. Pruessing, you are president of ExxonMobil Gas.

Mr. PRUESSING. ExxonMobil Pipeline Company, liquid pipelines.

Mr. RUSH. How many minority contractors—minority and women-owned contractors do you contract with?

Mr. PRUESSING. I will have to get that information for you, sir.

Mr. RUSH. OK, all right, OK.

Mr. Pruessing, ExxonMobil estimated that its Silvertip pipeline spilled up to 42,000 gallons of crude oil into the Yellowstone River in Montana, and the cause of the rupture is not yet known. This pipeline was buried beneath the river and crossing, and because of severe flooding the river was moving very quickly.

Prior to the rupture, in the city of Laurel PHMSA raised concerns about whether the floodwaters would erode the material covering the very pipeline, leaving it exposed to debris. According to PHMSA, the agency contacted ExxonMobil on June 1st, and ExxonMobil confirmed that there was at least 12 feet of cover, is that correct?

Mr. PRUESSING. Actually, sir, we did a depth-of-cover survey in the river in December of 2010. We confirmed that there were 5 to 8 feet of riverbed cover over the pipeline in the riverbed. Then, as you moved on to shore, between the shoreline and the first valve we had approximately 12 feet of cover on the shoreline.

Mr. RUSH. And was that in the bank or under the bed?

Mr. PRUESSING. The 12 feet was actually on the shoreline between the edge of the river and the first valve.

Mr. RUSH. What action did ExxonMobil take in June to maintain that cover and keep the pipeline buried far enough below the river to protect it from debris collision?

Mr. PRUESSING. There are a number of things we have been doing to maintain the integrity of this line. If you go back to 2009, we had done an inline inspection consistent with the regulations to confirm that the pipe was safe and it didn't have any integrity problems. I mentioned the December, 2010, depth-of-cover survey. Actually, PHMSA came in just a month ago, in June of 2011, and did a full review, an audit of the integrity management program for this pipeline.

Further, we were working with the city of Laurel during the high water period. We actually took the shutdown of the pipeline during 1 day to stand back and do a further risk assessment to confirm that we had a safe line. In working with PHMSA and the city of Laurel and looking at the integrity data, we had—we believe we had a safe line, so we restarted the line.

Mr. RUSH. Uh-huh.

Mr. Kessler, current regulations require an underground pipeline crossing a river to be buried at least 4 feet beneath—below the bottom of the river. Are you confident that 4 feet is adequate to con-

tain a pipeline from erosion and debris in cases of flooding or high-speed waters?

Mr. KESSLER. It does not appear to be. I am not an engineer, but, thus far, it does not appear to be, particularly if it is not reexamined and required to be maintained at least at that level.

Mr. RUSH. Would it make sense to vary the required depth of the pipeline based on the characteristics of the river?

Mr. KESSLER. It certainly might indeed, Mr. Rush.

Mr. RUSH. As I understand it, the requirement to bury the pipeline at least 4 feet below the river applies when the pipeline is constructed, but there is no specific requirement to maintain the burial depth of 4 feet over time, and that seems like a huge gap——

Mr. KESSLER. Agreed.

Mr. RUSH [continuing]. The regulations. Do you have any additional thoughts on this?

Mr. KESSLER. We agree, and there are different ways to get at this, and that is definitely a gap, we think, in the regulation, the idea that it doesn't have to be reexamined to maintain that depth. So——

Mr. RUSH. Thank you very much. My time has concluded.

Mr. WHITFIELD. At this time, I recognize the gentleman from Colorado, Mr. Gardner, for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman; and thank you for the testimony today. Just a couple of quick questions.

Several years ago, we had a big debate in the Colorado State legislature regarding borrow ditch excavation and notification and calls; and that got, as you can imagine, pretty interesting conversations both sides of the issue.

When it comes to section 3 of the bill, there is language in there that talks about appropriate—the minimum standards for State one-call notification programs in order to receive funding from the Federal Government to that program. It talks about appropriate participation by all underground facility operators, appropriate participation by all excavators, including all government contract excavators, flexible and effective enforcement under State law. And then exemptions prohibited, a State one-call notification program may not exempt mechanized excavation.

Are you satisfied with this language or is there a concern from States that this language may actually prohibit some activities that the States have exempted right now? Is anybody aware of activities that the State has exempted from their notification system, that this could actually override State law or State exemptions?

Mr. MARTIN. I don't know that I am aware of any of those that override, but I am not all that familiar with all of the details in the State requirements on that. I do think the language that is in the draft bill is very appropriate.

As you mentioned, some of the borrow pits—I know there are some examples that are used that says it is a borrow pit, no harm. But a borrow pit runs out. You have to extend that borrow pit. It might go wider, where a pipeline or utility might be. So that would be the reason why we would want to include all excavation activities into something like that, so that we are reasonably safe that a utility isn't impacted by somebody excavating it.

Mr. GARDNER. For instance, Colorado right now has some exemptions for their notification on landscaping. Would this language exempt mechanized excavation? Would that override an exemption for landscaping exemptions in the State?

Mr. MARTIN. If I understood that to be, it would be putting additional requirements on the States to include those groups. That would be my understanding.

Mr. KESSLER. Mr. Gardner, we are generally in lockstep with the industry on this issue. It is the exemptions themselves that are one of the major problems with our one-call system. And actually having been a landscaper in my previous life and operated backhoes and whatnot, I can tell you I am pretty lucky over time that I never hit an underground facility. They should definitely be included. I don't think it is a huge ask.

Mr. GARDNER. I certainly think when it comes to using backhoes and thing like that, but you know where there may be other activities——

Mr. KESSLER. Ditch switches, things like that.

Mr. GARDNER. Ditch switches certainly ought to be included in that. But you have other activities, too, that may be lesser disturbance that we ought to consider. The States I think have done a good job—at least Colorado has done a good job of taking those conversations into account. So I want to take a little more look at this language to make sure that we are not overriding State exemptions that have been well-thought and well-planned.

Mr. KESSLER. I think the telecom industry also has similar issues and is supportive in the same way. The pipeline industry and safety community is, too. So you should consider them as well.

Mr. GARDNER. Appreciate that. I thank you.

I yield back the balance of my time.

Mr. WHITFIELD. Thank you, Mr. Gardner.

At this time, I recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Over the last 12 months, we have seen a series of oil and natural gas pipeline failures all across the country. I think it is clear that our pipeline safety laws need to be improved and updated. As the committee develops pipeline safety legislation, we need to ensure that the legislation meaningfully addresses the regulatory weaknesses revealed by these accidents.

Mr. Kessler, your organization is devoted to enhancing the safety of pipelines. I would like to ask you about some of the tragic accidents we have seen this past year and what needs to be done to prevent similar accidents from occurring in the future.

Last year, an Enbridge pipeline spilled over 800,000 gallons of oil into the Talmadge Creek which flows into the Kalamazoo River. The pipeline was hemorrhaging oil all night long, but the company was not able to detect this massive leak. The discussion draft includes a provision on leak detection. Do you think it is adequate? And, if not, how can it be strengthened?

Mr. KESSLER. We applaud the committee draft for including leak detection, but, no, we don't think it is adequate. We think some kind of a best-available-technology standard—or really what we need to get at is the amount that triggers it and the timeliness of

providing these warnings. Clearly, that didn't happen in the case of the Kalamazoo River. And the contents of that actually have different properties than normal. We are finding more heavy metal, and it is more difficult to clean up. So it is even more important, I think.

Mr. WAXMAN. OK. Last September, the San Bruno gas pipeline explosion left eight people dead and many other injured. There was also tremendous property damage. Observers said that the suburban neighborhood looked like a war zone. The California Public Utilities Commission investigated and found that PG&E did not have records that could verify the type of pipeline they had in the ground and was therefore not properly operating and inspecting the pipeline.

The Senate bill includes a provision on maximum allowable operating pressure verification. The discussion draft does not include this provision. Mr. Kessler, in your written testimony, the Pipeline Safety Trust encouraged the committee to add this provision to the bill. Can you explain how this provision would address the problem we saw at San Bruno and why we should add it?

Mr. KESSLER. Thank you, Mr. Waxman.

Again, in almost every statute in the committee's jurisdiction I am aware of, we regulate two records. We don't actually necessarily regulate to the physical—the individual physical properties or under question. If you don't have accurate records, you can't regulate accurately. You can't set standards. You can't tell. So the Senate provision is vital we think, and based upon an NTSB recommendation, to making sure our regulatory system works as it should. Without it, everything is in question.

Mr. WAXMAN. In February, an old cast iron natural gas pipeline exploded in Allentown, Pennsylvania, killing five people. As I understand it, this pipeline was over 80 years old and wasn't scheduled to be replaced for another 100 years. Mr. Kessler, the discussion draft includes a provision requiring a survey of cast iron pipelines. Do you think this is adequate? And, if not, what should we require instead?

Mr. KESSLER. Thank you.

We are glad it is in there, but we believe it absolutely needs to go farther to assess the risk and require action. I think Atlanta, Georgia, long ago took steps to replace its cast iron pipeline. We have been talking about this. I think there has been something on the books for at least 30 years. And it is really time to act. Especially when natural gas prices are going down and we are building more pipe, we can I think capture some of that delta and then use that for this replacement program. You know what, one way or the other, you are going have to replace them and it would be better to replace them before they blow up than afterwards.

Mr. WAXMAN. I think that makes sense. I want to thank you for your answers.

I look forward to working with the majority to strengthen the discussion drafts so that our pipeline safety laws are up to the challenge of preventing future tragedies like those we have seen during the past year.

I thank you, Mr. Chairman. I yield back the balance of my time.

Mr. WHITFIELD. Thank you, Mr. Waxman.

At this time, I recognize the gentleman from Oklahoma, Mr. Sullivan, for 5 minutes.

Mr. SULLIVAN. Thank you, Mr. Chairman.

This is for the entire panel. I will start with Mr. Black.

With regards to expanding integrity management beyond high-consequence areas, should there be some sort of logical process for how the expansion occurs? For example, should the focus be on covering more people living or working around pipelines and therefore adding pipeline segments based on population in a phased manner?

Mr. BLACK. There is an ongoing rulemaking on liquids, on expansion of the pipelines, and on expansion of integrity management areas. We think the focus should remain, as Congress and PHMSA has put it, on high-consequence areas and make any expansion of that risk based. There may need to be a review of the repair schedule that is required within high-consequence areas right now if that is to be expanded. That repair schedule may not be as technically based as it should, and it is probably in need of updating.

Mr. MARTIN. Yes, if there is an expansion of the high-consequence areas, I think it is something—a study that should be conducted through the PHMSA organization with input from the industry as to the effectiveness of doing that. I do think it should be focused on population, as I stated in my testimony, of people living and working around our pipeline system. So I would agree with that.

Mr. KESSLER. I think any expansion we should delegate to the agency with the expertise and require input from not just industry but local governments, safety and environmental groups, a wide array of affected groups.

We do think that any change in the class rating system needs to go hand in hand with expanding integrity management, but they should be looked at together. Either we can study both, or we can require action on both. But I don't think you can do one without the other. And I think we should give some direction to the agency, but I think we should allow the agency to do its work.

Mr. DIPPO. Yes, AGA would agree with the position offered by Mr. Martin of INGAA that we believe PHMSA should study the existing regulations and what has been accomplished in the baseline assessment period, which is expiring next year, before they try to fix the existing regulation. It could, as you say, involve expanding HCAs to address areas that are more highly populated or perhaps expanding the number of miles that are being covered by the high-consequence areas.

But the idea is to understand for distribution companies there are many transmission facilities that are embedded into the distribution system. And as part of doing these assessments it is imperative that we take into account the singular directional fees that exist on the majority of our lines.

Mr. PRUESSING. ExxonMobil Pipeline uses the same integrity management program for all of our pipelines, including those that are not in HCAs. I do agree with Mr. Black's comment. It would be important to look at the repair schedules to make sure the risks are included in that.

Mr. SULLIVAN. Thank you.

Mr. Martin, Pipeline Safety Trust testifies that all gathering lines should come under the same regulation as transmission pipelines. Do you agree?

Mr. MARTIN. Well, representing the Interstate Natural Gas Association, we don't have the gathering lines as part of the association. So that is really not an area that we are focused on at this point.

Mr. SULLIVAN. OK. And then, Mr. Black—I have a little bit of time here—with regards to the leak detection standards, what is AOPL's view of the current provision? How would the best available standard affect operators who are forced to implement leak detection technology?

Mr. BLACK. Well, we don't know, but it could set up a standard that is very unattainable and quite costly with potentially little benefit. Right now, operators are required to conduct a leak detection capability evaluation in high-consequence areas. That is available to PHMSA for inspection and audit.

We have proposed in the PHMSA rulemaking that they require that of us throughout the transmission system. We think that is where the focus should be, is between PHMSA and the operator, evaluating what the leak detection capabilities are.

We also support research on this, and we think it is important to improve the technology. I think some type of a best available technology doesn't fit with leak detection as a series of practices and not one technology.

Mr. SULLIVAN. Thank you, sir.

I yield back.

Mr. WHITFIELD. Thank you, Mr. Sullivan.

At this time, I recognize the gentleman from Louisiana, Mr. Scalise, for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate you having this hearing on the legislation.

Of course, both the House and the Senate need to take action before the end of the fiscal year for reauthorization if we are going to continue to have a guideline for pipeline safety. I think what is important about this draft document is that it does seem to incorporate a lot of lessons learned, and all of us want to continue to learn as there are incidents.

Nobody wants to see any kind of pipeline incidents, but we also—just as, if a plane crashes, you surely don't stop all other planes from flying. You find out what happened to cause that crash to do whatever you can to make sure it doesn't again. In some cases, there may be things that went wrong, human error, and you can't necessarily do a lot about that, might do some things. But, in some cases, you might have a mechanical error or might have problems where you might need a recall. But, at the same time, the FAA doesn't ground all the planes.

But you need to learn your lessons, and that seems like that the gist of this is. It seems like some of those safety improvements are incorporated into the draft, and that is good news.

I do want to ask—I was looking on section 20 of the legislation. It talks about leak detection, and it requires the Secretary of Transportation to come back to us, the relevant committees, with guidelines on leak detection systems utilized by operators of hazardous liquid pipelines, transportation-related flow lines. And then

it further goes on in subsection B to require the Secretary to prescribe regulations and, of course, have notice hearings, the requisite things to come up with the best regulations for leak detection.

It was suggested by one of the panelists that we actually set standards in this bill, as opposed to having the Secretary bring us some of those recommendations. I wanted to ask you, Mr. Black, to get your take on that, kind of the difference between what was presented by one of the panelists versus what is in the draft document in section 10 dealing with leak detection.

Mr. BLACK. Part A in section 10 is the study. We don't oppose the study. A study was completed about 3 years ago and concluded what I think we all know here, that this is very complex, there is no one size fits all. And they did not conclude a rulemaking was necessary.

Item B assumes what the study will find. It assumes that there is a rulemaking requirement. And we do not believe that the Congress should presume that the rulemaking is necessary. We encourage the support of the Federal Government on leak detection technologies. I know PHMSA is considering some of this, as are we. We fund consortium research on leak detection availabilities. I think that is the focus, rather than a rulemaking.

Mr. SCALISE. OK, I appreciate that input.

As we look at continuing to make improvements, ultimately bringing this formal bill to a markup and hopefully moving it through the chambers, I hope you also keep in mind that it is critical that we continue to maintain our ability to transport oil products, natural gas products through our pipelines. Because if you don't have that pipeline system—I think most would agree that it is probably the safest method and most efficient method of transporting these types of products that people use every single day throughout our country. Because if you don't have that, you will be putting them on rail or on trucks and moving them in other ways. And so you have got a system that is built in right now.

We need to learn from any mistakes that have been made in the past and continue to improve safety, but, at the same time, keep in mind—unless you are somebody that just doesn't believe anybody should be able to use fossil fuels, which there are clearly people like this on this committee. But, in the real world, I don't think many people are ready to plug in their cars to a plug and get to where they need to go. They are going to be using fossil fuels for a long time. And if we are going to do that, we better have good methods of transporting.

And, clearly, if you look at all the different methods available, I think most would agree the most safe and efficient method is the pipeline system. And so as we continue to improve upon it, I think it is also important to remember that we cannot let this authorization expire, which it would if we didn't have this legislation.

So, again, thank you, Mr. Chairman, for bringing it; and I look forward to the debate as it continues on with actual legislation.

Mr. WHITFIELD. Thank you.

At this time, I would like to recognize the gentleman from California, Mr. Bilbray, for 5 minutes.

Mr. BILBRAY. Thank you, Mr. Chairman.

Mr. Chairman, I know it doesn't specifically address this piece of legislation, but, Mr. Kessler, there is one thing that I think we don't talk about enough and that is, you know, long-term planning and trying to get cooperative efforts before a crisis. We always kind of respond to crisis.

My question is, you were talking about how many people die every year or whatever with these accidents. We lose—what—100 people a day on our interstate freeways. But the Federal Government has taken a lead and required local governments to take a lead at citing freeway alignments, doing the environmental, looking at the big picture. We don't ask the companies that build freeways for us to do the environmental assessment and do the alignments and do it the right-of-way acquisition. We have government involved but in a proactive way, not a reactive way.

Just like we require the council of governments and the States to participate in the citing of the freeways and just as cities and counties in the urban areas cite power lines, gas lines, and water lines, don't you think it is about time we start talking about having council of governments be proactive of where is the best place to put the utility easements and try to do this comprehensively as a responsibility of good planning, rather than continuing to ask the private sector to always sort of go do it yourself and it is not our job?

Mr. KESSLER. Mr. Bilbray, more planning, more collaboration, more discussion between companies and local, State, Federal Government is always a good thing. And, as you know, oil pipelines are cited by States and interstate gas by the FERC under the Gas Act. And there are gaps. And, in fact, this committee in 2002 included a provision that required development of planning and information. You know, there is a lot of encroachment on existing pipelines. It is not the pipeline's fault that cities have grown up around pipelines. And what you need to do, as you said, better plan and better communicate. And we have advocated for—there is a report that has come out of the 2002 Act, but we need to fund that kind of outreach, and we need to do more of what you are talking about.

Mr. BILBRAY. I only bring this up because those of us that were in the game—I started off at 25 as a council member and I was a mayor at 27, so a county of 3 million I supervised. I think those of us in government are quick to point fingers at the private sector that they need to do more, but we are slow at talking to ourselves or our colleagues in government of saying we need to be willing to take the heat. We have got to be willing to stand up and say this is the best way for an alignment or this is the safest way, whatever.

Mr. Chairman, I just wanted to bring that up because I think we are treating symptoms a lot of times with regulatory oversight mandates because we haven't set the great foundation and required those at the State and especially at the regions to take the responsibility at being proactive and telling the private sector, hey, just like we do with our streets in our urban areas, here is the alignment. This is the alignment we set aside for you. You have access to this. And here we go.

And we may even want to charge for it, which they do in urban areas, but we at least take the heat of running those lines down,

rather than somebody later showing up, my God, I didn't even know this was running through my city. Not only should they know that, but they should be required to participate in the decision making of where it runs through their city, just like we do with freeways.

We don't allow cities and counties to say, it is not my business. We don't have a Federal FERC or a Federal transportation agency deciding those easements. We don't have State do that. We have local and regional do that. And you agree we ought to be moving towards that kind of participation in our utilities.

Mr. KESSLER. Again, the committee was wise to put the provision in in 2002 under Mr. Tauzin and Mr. Barton. We got a good report. We need to actually put those things into effect. You are absolutely right. More collaboration, more planning is always better. It is good for the companies, and it is good for the general public and the environment.

Mr. BILBRAY. And more government trying to find answers, rather than trying to find fault.

OK, I yield back.

Mr. WHITFIELD. Thank you, Mr. Bilbray.

Before I conclude this hearing, I would like to ask one other question. And then, Mr. Green, did you want to ask a few more questions? I had the impression that you would like to ask a few more.

My question would be this. On section 10 of the bill entitled leak detection, we talk about a study by the Department of Transportation on technical limitations and so forth, and all of you are sort of experts in this field. I would just ask a general question on your view of the technology and leak detection. Are we making real progress in that area or what are your impressions on that?

Mr. BLACK. Yes, I think the ability to detect a leak is improving. I think the expectations for a pipeline operator on detecting a leak are also improving.

The reason this is a tricky issue is leak detection is a bunch of things. It is your SCADA system, it is your gauges, the accuracy of your gauges, your control room processes, your displays, formulas that are used in determining whether this is a false positive or indeed a leak. All of that is improving but certainly needs to improve further.

Mr. WHITFIELD. Mr. Martin.

Mr. MARTIN. Yes, obviously, in the bill that was addressing liquids lines, gas or different material that is going through the pipeline, but we do have leak detection programs. And I would just agree with Mr. Black on the advancements. We have done a lot of work and made a lot of progress, but we still have a lot of work to do.

Mr. KESSLER. We have done a lot of study of this issue. And I would note that the State of Alaska on liquid pipelines—not exactly the most liberal or certainly not an anti-production State—has a 1 percent standard—leak detection standard. We would love to see that taken nationwide, but we recognize there is different characteristics, different pipelines, both the pipelines themselves and the surrounding area.

This is not about getting companies to pay unreasonable amounts. This is about risk, and it is about putting these things with the best technology where they are most useful, not everywhere. This is being made out to be something much more than it is. If Alaska can do it, why can't other States? Why can't the country do this?

Mr. WHITFIELD. Mr. Dippo?

Mr. DIPPO. Yes, I know the bill discusses leak detection on the liquid side, but on the gas side, as Mr. Martin said, we do do leak detection every day, continuously. That is part of running a system and making sure that it is fit for service.

Mr. WHITFIELD. OK. Mr. Pruessing.

Mr. PRUESSING. I agree with Mr. Black that leak detection takes a number of different areas. It covers a lot of things.

I would say that there is really not a standard out there right now that anybody's technology meets what everybody wants, so it continues to evolve. And a lot of companies, ourselves included, are doing internal proprietary work to try to develop that next level of standard. There is not something out there right now that is off the shelf that people could go use that would meet all the requirements that people are asking for.

Mr. KESSLER. I would just like to point out that the bill draft does contemplate economic circumstances, technical circumstances. You have wisely included that. So I don't think it is fair to say that these aren't going to be considerations, because you have wisely seen that they will be. So I just want to make sure that was——

Mr. WHITFIELD. Thank you.

You do? Mr. Rush has questions; and then we will go to you, Mr. Green.

He defers to you, Mr. Green.

Mr. GREEN. I just want to follow up some of the questions from members and on the hour versus the immediate. How often do operators—and this would be both liquid and gas—just have some anomalies in the pipeline that you may not think it is a rupture, but it is—and you find out it really is something. Is that pretty common? Is it in liquids, Mr. Pruessing?

Mr. PRUESSING. You can have indications on a pipeline that do not actually reflect a leak but that just—you don't understand. So there could be cases where you would make that call without really having a full understanding if you had a leak or not.

Mr. GREEN. And you would assume you would make that call based on the safest possible——

Mr. PRUESSING. Yes, we are always going to take the conservative approach.

Mr. GREEN. Mr. Dippo?

Mr. DIPPO. Yes, the concern for the natural gas distribution industry is to focus on the response. So with the proposed legislation, we are concerned the 1-hour limit will take the focus away from making that initial emergency response to the scene. And, as I said, with the one-call provisions and some existing exemptions, it is not unusual for us to see struck means and services on a daily bases.

Mr. GREEN. Would it make sense to have different standards for liquids versus natural gas? Have there been any discussions of that

over the years, depending on the product that goes through the pipeline?

Mr. DIPPO. I am not aware that there has been any of those discussions. Again, our focus would want to be to respond to the emergency situation and then follow up with the reporting call to the NRC.

Mr. GREEN. Mr. Chairman, I have a series of questions. I would like to see what is happening for ExxonMobil, mainly their relationship between EPA and the response. I know we don't have time now, but if I could submit those and see how the relationship has evolved on those disasters. We all watched what happened with BP, the Department of Energy, and different Federal agencies, because it was all on the national news. Montana is not the Gulf of Mexico maybe, but if I could submit those questions, I would appreciate it.

Mr. WHITFIELD. Absolutely.

Mr. Rush, you are recognized.

Mr. RUSH. In recent years, there has been a large expansion known as gathering pipelines. These are the pipelines that bring natural gas and oil from production facilities to Federally regulated transmission pipelines. With thousands of new gas wells being drilled, even highly populated urban areas now have gathering pipelines beneath them, and some of these gathering pipelines are of similar size and operating pressure as transmission pipelines. The problem is that the Federal Pipeline Safety Agency is explicitly prohibited from regulating gathering pipelines under current law.

Mr. Kessler, does it make sense for the pipeline safety statute to include a blanket regulatory exemption for gathering pipelines?

Mr. KESSLER. No, sir. The development of the Marcellus shale and other nontraditional areas is a tremendous benefit to the country. It is great that it is being developed, and it is resulting in more and more pipelines. And, as you point out, some of these gathering lines really have all the characteristics—whether it is pressure, size—of a transmission line. And like the old saying goes, if it looks like a duck and quacks like a duck—to paraphrase—it probably should at least be considered to be regulated as a duck, and the law doesn't allow that right now.

Mr. RUSH. Well, why is it important for PHMSA to consider regulating some of these gathering pipelines?

Mr. KESSLER. I think you already made that case. Because of lot of them are popping up in nontraditional areas that are densely populated, that have no experience, and again have all the characteristics of the things that we do regulate. It shouldn't be what we call them. It should be the characteristics of the line themselves that require the regulation.

Mr. RUSH. As I understand it, the administration proposal includes a provision to first eliminate the statutory barrier. Then the proposal would require PHMSA to review all of the existing regulatory exemptions for gathering pipelines and eliminate the ones that are not justified. Under that approach, all gathering pipelines wouldn't necessarily be regulated like transmission lines; is that correct?

Mr. KESSLER. That is correct.

Mr. RUSH. PHMSA would have the flexibility to decide which gathering lines should be treated like transmission lines; is that correct?

Mr. KESSLER. That is correct, sir.

Mr. RUSH. I think the approach proposed by the administration makes a lot of sense. The Federal pipeline safety agency shouldn't be barred from regulating all gathering pipelines, as there are certain gathering pipelines that pose the same risks as the new transmission pipelines that are currently regulated. I would like to work with them in order to strengthen this section of the discussion draft.

I want to bring to your attention the fact that just this month there was a gathering line oil spill in Montana that apparently went unreported for at least a month.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. WHITFIELD. Well, thank you, Mr. Rush.

It is my understanding that our staffs are working together and that you all have submitted a list of priorities from your perspective. So, hopefully, we can come out with a product.

Your testimony helped us a lot today, and we appreciate that. We appreciate all of you being here. I know Mr. Kessler and Mr. Black roamed the halls of the Energy and Commerce Committee for a few years, so we hope that you felt good being back with us today.

Mr. RUSH. Mr. Chairman, I might remind the witnesses that I am looking forward to getting the report on the minority membership and their various associations.

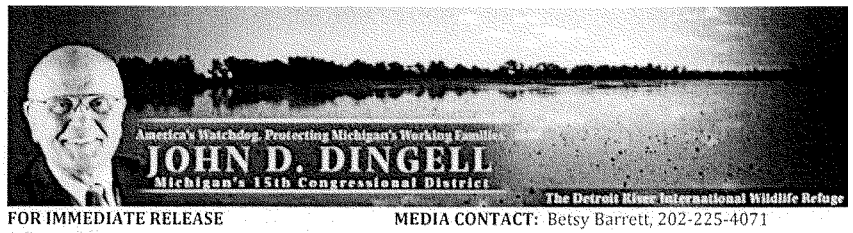
Mr. WHITFIELD. Yes, there were some unanswered questions and then some questions will be submitted. In fact, we will keep the record open for 10 days so that members may have an opportunity to submit additional materials.

And, with that, we conclude the hearing and look forward to working with all of you as we proceed on this legislation.

Thank you.

[Whereupon, at 11:05 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



FOR IMMEDIATE RELEASE **MEDIA CONTACT:** Betsy Barrett, 202-225-4071
July 15, 2011

House Committee on Energy and Commerce
Subcommittee on Energy and Power
"The American Energy Initiative – Discussion Draft of H.R._, the 'Pipeline Infrastructure and Community Protection Act of 2011'"

"Mr. Chairman, thank you for your courtesy. Today we are here to talk about the important and timely issue of pipeline safety. The previous year was one of the worst on record for the industry and demonstrated the need for serious and meaningful reform. An explosion in San Bruno, California killed eight people and destroyed 38 homes and damaged 70 others. 819,000 gallons of oil spilled into waterways near Marshall, Michigan, resulting oil traveling 30 miles downstream and a $550 million cleanup effort. In Allentown, Pennsylvania a natural gas pipeline exploded, which damaged 50 buildings and claimed five lives. Finally, just this week between 30 and 40 thousand gallons of crude oil spilled from a pipeline into the Yellowstone River in Montana. These devastating incidents underscore the need for strong pipeline safety laws.

"This Committee has a long history of bipartisan cooperation on this important issue, and I expect that to continue during the 112th Congress. The most recent pipeline safety laws were written in a bipartisan manner, passed by this Committee under Republican control and signed into law by President Bush. I have utmost confidence that this process can be replicated. I want to thank Chairman Upton for reaching out to me during this process and I look forward to continuing an open and honest dialogue which gets us to an end product that members on both sides of the aisle can proudly support.

"There are many provisions in this discussion draft that I support which will go a long way in fixing the problems in our pipeline safety system. However, I remain concerned with certain provisions in this discussion draft. Specifically, I am concerned about the extension of the "knowingly and willfully" standard to civil penalties. This seems like an impossible standard to meet and may hamstring PHMSA's ability to crack down on wrongdoers. The discussion draft eliminates the class location requirement without expanding the integrity management program, which seemingly creates a new loophole in our pipeline safety system. The mandate for industry to get a hearing within 20 days if they object to an administrative enforcement effort seems to be giving pipeline operators more protections than the American public; if a regular citizen wishes to voice his or her concern at a company applying for a waiver from safety regulations their concern can be dismissed with a publication in the federal register. We need to be strengthening the law and giving more protections to citizens, public lands and the environment, not giving more process rights and protections to industry.

"That being said, I applaud Chairman Upton for taking the initiative and releasing this discussion draft so we can begin having this important conversation. I look forward to working with all members of this Committee to produce legislation that improves our pipeline safety system, helps prevent future incidents, and instills confidence in the American public. I yield back the balance of my time.

U.S. Department
of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

SEP 21 2011

The Honorable Ed Whitfield
Chairman, Subcommittee on Energy and Power
United States House of Representatives
Washington, DC 20515-6115

Dear Chairman Whitfield:

Thank you for your letter of September 7 regarding my appearance and testimony at the hearing entitled, "The American Energy Initiative." Your letter also transmits two Questions for the Record from the Honorable Fred Upton. This letter provides the Pipeline and Hazardous Materials Safety Administration's (PHMSA) response to your request.

The Honorable Fred Upton

1. ***You state in your testimony that damage caused by third party excavators are the leading cause of pipeline incidents. You also state such incidents are 100% preventable. Please describe how you would improve third party notification requirements to eliminate these preventable accidents.***

   PHMSA has a number of initiatives underway to assist States in improving damage prevention laws and programs, and expects to issue a Notice of Proposed Rulemaking in 2011 to provide for Federal enforcement of one-call laws in States that lack effective enforcement. PHMSA uses the nine elements of an effective damage prevention program, cited in the 2006 PIPES Act, as our guiding principles when addressing damage prevention.

   Additionally, preventing damage to underground facilities involves four simple steps:

   1. Call 811 before digging;
   2. Wait the required time before digging;
   3. Accurately locate and mark pipelines by operators; and,
   4. Dig with care around underground facilities.

   At a minimum, every State program should ensure that all stakeholders participate in this four-step process and are held accountable when they fail to do so through effective enforcement of their State one-call law. Other important elements include data collection and education. By collecting data on damages and analyzing that data, States can effectively target educational efforts based on

causes of damage. States that have effective enforcement as well as data collection programs generally show an overall reduction in damage rates.

More information on our efforts to address damage prevention can be found on our Stakeholder Communications web site at: http://primis.phmsa.dot.gov/comm/DamagePrevention.htm.

2. ***Can you detail PHMSA's role in the review and approval process of the proposed Keystone XL Pipeline? What contribution does PHMSA make towards the State Department's Environmental Impact Statement? What safety requirements has PHMSA suggested the operator of Keystone XL should enact?***

Can you detail PHMSA's role in the review and approval process of the proposed Keystone XL Pipeline?

The PHMSA is acting as a cooperating agency providing input to the Department of State, which is the lead jurisdictional authority for determining whether to approve or deny the project. Input/comments from PHMSA have primarily been in the area of pipeline safety, and when requested from the Department of State. The PHMSA has been asked, and is currently engaged, in assisting with review and approval of a third party to conduct a review of the risk assessment and associated pipeline safety measures developed for the project.

What contribution does PHMSA make towards the State Department's Environmental Impact Statement?

Through its role as a cooperating agency PHMSA has:

Reviewed and provided comments to the State Department's Pre-Draft EIS (PDEIS), Supplement Draft EIS (SDEIS), and Final EIS (FEIS). Comments from the PHMSA have primarily been in the area of pipeline safety, particularly any language related to PHMSA's role in inspection and enforcement during construction, operation, maintenance and emergency response.

Shared with the State Department supplemental information received from the operator as part of PHMSA's review of a previous special permit request involved with the project (withdrawn August 2010) that may also be relevant to the State Department's development of the EIS.

Attended the State Department public meetings following issuance of the State Department's Draft EIS (DEIS). For those meetings where a Q&A format was allowed (versus comment only), PHMSA helped respond to questions related to pipeline safety.

When requested or needed, provided additional information and clarification to the State Department via email, phone calls, or in-person meetings. This input, among other things, has involved developing additional technical conditions to help address public comments and concerns received through the State Department's process.

The PHMSA is currently engaged in assisting with review and approval of a third party to conduct a review of the risk assessment and associated pipeline safety.

What safety requirements has PHMSA suggested the operator of Keystone XL should enact?

In addition to requirements established in accordance with the hazardous liquid pipeline safety regulations, Title 49 Code of Federal Regulations (CFR), Part 194, Part 195, and Part 199, PHMSA has worked with the State Department to develop a list of 57 conditions intended to help address public comments and concerns related to pipeline safety. The conditions are in the area of pipe design and manufacturing, system design, construction, testing, operations, maintenance, monitoring, reporting, record keeping, and certification. Implementing these 57 conditions will provide additional safety measures for this project and provide a degree of safety along the entire length of the pipeline system similar to that required in high consequence areas (HCA's) as defined in Title 49 CFR Part 195.

If you have any questions about these responses, please do not hesitate to contact me or Ms. Patricia Klinger, Deputy Director for Governmental, International and Public Affairs, at 202-366-4831 or by email at patricia.klinger@dot.gov.

Regards,

Cynthia L. Quarterman

AOPL-API to Questions for the Record for Chairman Fred Upton
Subcommittee on Energy and Power
"The American Energy Initiative"
July 15th and 21st 2011

The Honorable Fred Upton

1. **Pipeline Safety Trust testifies that all gathering lines should come under the same regulation as transmission pipelines. Do you agree? Why or why not? What is the rate of incidence among liquid gathering lines? What types of gathering lines are already regulated? Is there need for further regulation of gathering lines?**

Answer: AOPL and API do not support regulating all gathering lines under the same regulatory model as transmission pipelines, and there has been no substantiation for any such broadening of PHMSA jurisdiction. Indeed, after extensive assessment and input from the public and other stakeholders, PHMSA has addressed the issue of the appropriate regulation of gathering lines through its Rural Gathering and Low-Stress Pipelines rulemakings.

It is important to recognize that very significant portions of gathering systems are already regulated by PHMSA, even though gathering lines are typically not interstate lines. Hazardous liquid gathering lines located in "non-rural", or populated, areas and lines that cross a commercially navigable waterway are subject to PHMSA regulation under Part 195. Rural gathering lines between six and eight inches in diameter located within 1/4 mile of an Unusually Sensitive Area (USA) are subject to certain PHMSA requirements regarding corrosion control, damage prevention and marking.

Most gathering lines are small diameter, ranging from 3" - 8", with most being less than 8", and are almost exclusively intrastate in nature. In addition to PHMSA's regulation of certain gathering lines, gathering lines are or could be subject to state regulations, EPA's spill prevention and response regulations, as well as oversight by other federal agencies. It is inaccurate to refer to gathering lines outside of PHMSA's jurisdiction as "unregulated," as some have.

Gathering lines typically operate at lower pressures than larger diameter, main transmission lines, and make up a small portion of the volume from incident releases. The percentage of release volumes attributed to gathering lines represents the smallest portion of total pipeline releases overall. For example, gathering lines exempt from PHMSA jurisdiction represented 64% of the number of incidents from onshore pipelines reported to the industry's Pipeline Performance Tracking System over the 2005-2009 period, but just 14% of the barrels spilled. Similarly in this period, two-thirds of the gathering releases from onshore pipelines were less than five barrels; for transmission pipelines, half were less than five barrels.

It is worth noting that, before PHMSA can promulgate new regulations, it must consider certain factors such as the appropriateness and reasonableness of any proposed standard and the reasonably-identified costs and benefits. It is very likely that applying the transmission regulatory requirements to gathering lines would result in extremely high costs with little, if any, additional safety benefit, and would result in shutting-in significant energy supply because the lines would no longer be economical. In addition, many gathering lines are not configured for in-line inspection and other prescriptive requirements directed by Integrity Management Plans (IMPs) that are required for transmission pipelines. Despite the significant developments in the miniaturization of in-line inspection technology, the vanguard of these sophisticated tools could still not be utilized on many gathering lines for some time to come.

2. **The Discussion Draft proposes that automatic and remote-controlled shut-off valves be mandated for pipelines that are constructed or entirely replaced. Some would suggest that these valves should be placed in all high consequence areas. Do you have a sense of what this sort of retrofitting would cost? Is it feasible?**

Answer: Remote-controlled, manual, and automatic shutoff valves, which can block flow in the event of a release, are deployed in existing liquid pipelines today based on engineering assessments. Operators are required under PHMSA regulations to consider their use in segments that could affect high consequence areas (HCAs). The installation and placements of remote-controlled or automatic shut-off valves, together referred to as Emergency Flow Restricting Devices (EFRDs), are based on an engineering analysis that considers such factors as pipeline diameters, elevations, hydraulic analysis, commodity carried, nearby HCAs, the ability to access electric power in rural locations, and personnel access issues. This technically based consideration for segments that could affect HCAs is available for PHMSA inspection and review.

Installing a remote-controlled valve on an existing line is feasible but can be tremendously expensive. A retrofit usually requires an excavation, reconfiguration of a buried line to accommodate an aboveground valve, and provisions for power and communications to the site of the valve, which is often in a rural setting. If automatic or remote-controlled valve retrofits were to be required, industry costs could potentially be hundreds of millions of dollars on just the segments that could affect HCAs. According to a report published by the Congressional Research Service (CRS), costs would vary for retrofitting lines with remote-controlled valves based on size, location, and commodity transported, in addition to other factors, from $40,000 to $1,500,000 per valve.[1] The potential for additional right-of-way costs, environmental impacts, and construction accidents associated with the valve replacements should also be considered. In addition, implementing a widespread

[1] See Congressional Research Service December 13, 2010, Report: *Keeping America's Pipelines Safe and Secure: Key Issues for Congress*, page 20.

valve retrofit on existing lines would cause service interruptions and eventually increase rates for pipeline transportation. Pipeline costs can be passed through to shippers, who can then pass costs through to consumers.

Installation of these valves can also increase safety risks due to pressure surges from closures, the potential for seal, bonnet, or packing leaks, and vandalism or other destruction to the valve apparatus. A requirement to place automatic or remote-operated valves at predetermined locations or fixed intervals in lieu of basing installation on a comprehensive engineering risk analysis that considers these factors could be arbitrary, costly, and potentially counter-productive to pipeline safety.

When PHMSA reviewed mandatory placement of automatic shutoff and remote-operated valves in its December 2000 Final Rule on Hazardous Liquid Pipeline Integrity Management, it said:

> "...we believe, prescriptive valve installation and spacing requirements would ignore the site-specific variables and unique flow characteristics of a pipeline segment. Prescriptive requirements could also overlook the potential sensitivity of a specific high consequence area. For example, locating an EFRD near a body of water to reduce the potential volume released might necessitate locating the valve in sensitive wetlands or a flood plain of a river, which creates myriad other problems."

3. **Pipeline Safety Trust suggests adding industry-developed or professional organization pipeline safety standards as well as pipeline operator's facility response plans in the Public Education and Awareness section of the Discussion Draft. Do you have an objection to this suggestion?**

Answer: Like other industries with hazards, liquid pipelines employ many safety standards developed by ANSI-accredited standards development organizations (SDOs). Developed by technical and operational experts with operations experience and responsibilities, these standards have helped liquid pipeline operators improve safety performance for decades. PHMSA has chosen to incorporate some of these standards into federal regulations by reference. Because industry standards developed by SDOs are copyrighted materials owned by the SDO that publishes them, it would be a violation of copyright law for PHMSA to allow unlimited access to the standards. As a result, PHMSA does not provide unlimited public access to standards it has incorporated into regulations. AOPL and the API oppose legislation requiring PHMSA to violate the copyright of any SDO by providing unlimited public access to any pipeline industry standard. API, an ANSI-accredited SDO, provides limited public access on its website (www.api.org) to API standards PHMSA and other federal agencies have incorporated by reference into federal regulations.

AOPL and API also oppose requiring PHMSA to grant unlimited public access to Oil Spill Response Plans (OSRP) and Facility Response Plans (FRPs). Spill response

plans contain sensitive information about the operations of liquid pipelines and putting this information on the Internet could place our nation's critical infrastructure in jeopardy of hostile action. In addition, OSRPs and FRPs contain important information regarding an operator's emergency response capabilities. Placing response plans online could give organizations unfriendly to our nation's interests a blueprint to damage key sections of pipelines and disrupt emergency personnel when responding to a pipeline release or making them a secondary target when they respond.

Pipeline operators submit response plans for government review, as dictated by law and federal regulations. AOPL and API believe the responsibility for reviewing response plans properly falls to the federal government, which should and does represent the public interest when reviewing and commenting on these plans. Response plans are stringently monitored by PHMSA, EPA, and the Coast Guard. Pipeline operators conduct drills under the National Preparedness for Response Plan guidelines. They are also required to train with local first responders that represent communities with pipeline facilities in their areas. Operators are mindful of recent PHMSA Advisories to share needed information with local first responders. Pipeline operators must update their plans at a minimum of every five years, and update plans within 30 days if a new or different operating condition or information would substantially affect the implementation of its response plan. Plans must be reviewed by either PHMSA or EPA, and often both. Government agencies with a critical need to have access to sensitive security and response information about pipelines do, in fact, have such access and are kept fully apprised on the federal and local levels.

4. **On leak detection standards, what is the status of these technologies and systems at present and what examples exist of when leak detection systems have prevented significant spills from occurring?**

Answer: Liquid petroleum pipeline operators work hard to prevent leaks and detect any that occur as soon as possible so that they can be fixed promptly. Every transmission pipeline operator uses something that could be called a leak detection "system." However, it is important to recognize that leak detection is not one specific technology. Leak detection is a blend of control room management, controller training, SCADA (Supervisory Control and Data Acquisition) systems, alarm management, mathematical algorithms, software and hardware applications, historical experience, and diagnostic skills used to analyze data and formulate an opinion regarding a potential or actual leak situation. Leak detection also includes right-of-way surveillance, public awareness programs, and education.

Control room operators are trained to identify signs of leaks as they monitor pipeline data and operating conditions. Indicators of a possible leak include a drop in pressure, a volume imbalance, and a change in flow conditions. Not every leak can be detected instantaneously, however, and not every possible leak turns out to

be an actual leak. A pressure drop within a pipeline could indicate a leak, but it could also indicate fluid columns have "separated" and are not packed tightly.

Detecting leaks in pipeline systems, especially small leaks, can be very challenging. Some of the complex variables are the properties of the fluid being transported, the temperature of the transported product through varying terrain, the number of line branches and origination and delivery points, the diameter and length of the pipeline, the altitude and grade of the pipeline segment, the states of flow, the types and performance of measurement instruments, the characteristics of SCADA systems, and human response.

One of the many ways in which leak detection is being improved is through recent PHMSA regulations regarding Control Room Management. The rules address training of pipeline controllers, including improved recognition of leaks, response to alarms, and identification of other abnormal operating conditions. The rules will also require improvements in SCADA systems and the displays control room operators use to detect leaks.

Regulations today require operators to evaluate their ability to detect leaks in pipeline segments that could affect HCAs. These leak detection capability evaluations are required to be comprehensive, risk-based, consider sensitive areas and be open for PHMSA inspection and audit. The operator must perform a system-specific analysis considering the length and size of the pipeline, the type of products carried, the pipeline's proximity to the HCA, the swiftness of leak detection, the location of the nearest response personnel, and the pipeline's leak history. AOPL and API have proposed that PHMSA expand the requirement for leak detection capability evaluations to all transmission pipeline segments, not just for those portions that could affect HCAs.

Work is underway to develop and test new technologies that continually improve leak detection capabilities. Many of the currently marketed leak detection applications have not proven to be effective or reliable under all circumstances from an operational perspective. This has often led to costly interruptions of energy supply to customers without a marked improvement in leak detection. Before any leak detection application is implemented, it must be demonstrated to be valuable in reducing risk, increasing public safety, and reducing environmental exposure. Additionally, because each pipeline system is unique, a wide variety of applications and operating conditions need to be carefully considered before employing new technology and practices.

If a liquid pipeline operator is required to use a leak detection "system", the use of that "system" must be technically, operationally, and economically feasible for that pipeline. Any new PHMSA standards for leak detection "systems" should similarly be technically, operationally, and economically feasible. New leak detection requirements must reflect the unique characteristics presented by each pipeline segment; the capabilities of proven and cost effective technologies; and the need to

enable effective human response. A "one size fits all" standard would not take into account these diverse factors and the very complex operational characteristics of pipeline systems with segments of varying sizes and operating pressures.

5. **What difficulties do automatic shut-off valves present for liquid line operators? How do remote valves differ in this respect? Does the Discussion Draft allow an adequate amount of flexibility through the rulemaking process so that automatic valve requirements might not necessarily apply to liquid line operators?**

Answer: Remote-controlled shutoff valves are one of the tools used by a liquid pipeline operator to mitigate releases. Liquid pipeline operators use remote-controlled valves much more than they use automatic shutoff valves because of the properties of the products they carry. This is because an automatic valve closure can stress or even damage a pipeline carrying liquids, because of the kinetic energy that generally incompressible liquids would apply to a quickly closed valve and the pipeline near the valve. For liquid pipelines, automatic valve closing can, in fact, cause pipeline ruptures in some circumstances. In contrast to an abrupt closure that may take place with automatic shut-off valves, a pipeline operator that shuts down a pipeline segment with a remote shut-off valve would first cease pumping, in order to quickly reduce the kinetic energy and pressure in the line. After pumping ceases, the operators would then close remote-operated valves expeditiously but with necessary care to reduce the stress on the valves and pipe.

The Discussion Draft provision does appear to provide PHMSA the flexibility to distinguish between remote-controlled valves and automatic shutoff valves in liquid pipelines applications. The use of the qualifier "where technically, operationally, and economically feasible" appears to give operators an opportunity to distinguish between the two types.

In answering question #2, we discuss the potential costs and drawbacks of requiring either of these valves to be retrofitted on existing pipelines.

6. **Please explain AOPL's view on how carbon dioxide pipelines should be regulated when transporting carbon dioxide in a liquid or gaseous state.**

Answer: Carbon dioxide can be transported by pipeline as either a gas or a supercritical fluid, which is a physical state where the product exhibits certain characteristics of both a gas and a liquid. To date, all or nearly all transportation of carbon dioxide has been as a supercritical fluid. The Secretary of Transportation has effectively regulated interstate pipelines transporting carbon dioxide as a supercritical fluid under safety standards initially adopted in 1991 and codified in 49 CFR Part 195. These regulations do not apply to the transportation of carbon dioxide in a gaseous state, only to carbon dioxide moved in a supercritical state.

The Energy and Power Subcommittee's draft proposal appears to require PHMSA to prescribe new regulations for transportation of carbon dioxide in both a supercritical and gaseous state. AOPL and API believe Congress should not require PHMSA to issue regulations regarding the movement of carbon dioxide in a supercritical state, because such regulations have been in existence for 20 years. AOPL and API do not oppose requiring PHMSA to issue new regulations for movements in a gaseous state. Our view is that interstate pipeline transportation of carbon dioxide in a gaseous state should be regulated in a similar manner to the current standards already in place under 49 CFR Part 195 for carbon dioxide in a supercritical state. In essence, we seek one regulatory standard for pipeline operators that transport carbon dioxide.

September 21, 2011

The Honorable Ed Whitfield
Chairman Subcommittee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: Interstate Natural Gas Association of America response to letter, Whitfield to Martin, dated September 7, 2011

Dear Congressman Whitfield:

Mr. Daniel B. Martin testified on behalf of the Interstate Natural Gas Association of America (INGAA) on July 21, 2011, at the hearing entitled, "The American Energy Initiative" INGAA is pleased to respond to the Honorable Fred Upton's questions provided to Mr. Martin in a letter dated September 7, 2011.

1. Can you elaborate on where redundancies between class location requirements and integrity management programs exist and where they do not?

Response: It is important to understand that class location requirements were established in 1953 for gas pipelines in the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) standard to provide a larger safety factor in areas with greater consequence in the absence of availability of precise risk assessment tools. ASME updated the requirements several times thereafter and revisions made in 1968 were included in gas pipeline safety regulations codified in 1970. Now, forty years later we have tools available that enable us to evaluate fitness for service and where warranted mitigate, repair or replace. Consequently, class location requirements for operations and maintenance-related activities can be redundant. Integrity management applies to operations and maintenance activities and as such, there are no redundancies with respect to design, materials specification, and construction.

There is one significant place where redundancy occurs between class location requirements and integrity management within HCAs. The regulations at 49 CFR 192.611 require that if the operating stress level corresponding to the established maximum allowable operating pressure (MAOP) of a segment of pipeline is not commensurate with the present class location, that the maximum allowable operating pressure of that segment of pipeline must be confirmed or revised. This provision has the impact of requiring that pipe either be replaced or the pressure reduced.

This provision becomes redundant in that under Subpart O of 49 CFR 192, Integrity Management, an operator is required to evaluate threats, analyze risk, conduct assessment, mitigate anomalies injurious to the integrity of the pipeline and implement on-going preventive and mitigative measures. Having the knowledge of the integrity of the system to

establish its fitness for service makes the replacement or reduction of pressure redundant, and therefore unnecessary.

2. The Discussion Draft proposes that automatic and remote-controlled shut-off valves be mandated for pipelines that are constructed or entirely replaced. Some would suggest that these valves should be placed in all high consequence areas. Do you have a sense of what this sort of retrofitting would cost? Is it feasible?

Response: While we have not done a comprehensive study of the costs and impacts to gas deliverability of these two options, 1) new and replaced pipelines and 2) all High Consequence Areas for the INGAA membership, we have developed estimates based on recent filings by operators in California.

New or replaced pipelines

We estimate the cost of installing valves on new or replaced valves to be approximately $80 million dollars (through 2020) based on projections of new construction of approximately 8,000 miles per year.

All High Consequence Areas

Under the other scenario of addressing valves in High Consequence Areas (HCA), many existing valves will have to retrofitted with new valve operators (automatic or remote) or replaced entirely if new technology cannot be adapted to these legacy valves. Detailed estimates of the costs based on the recent California Phase 1 requirements can be used as a surrogate of the combined effect to both INGAA member pipelines (interstate pipelines) and AGA member pipelines (local distribution companies, or LDCs). California has approximately 1.8% of the pipelines within HCAs nationwide. The estimated costs for California operators are $207 Million. If you assume that the California scenario is reflective of the whole nation, the costs would be over $7 Billion.

While the cost impacts to INGAA members would be significant, the majority of the cost impacts would be borne by the LDCs. The majority of the pipelines within HCAs exist in LDC piping systems due to the proximity of that piping in urban areas. Also, because of the configuration of INGAA member pipeline systems, a significant number of these pipeline systems have already incorporated some automatic and remote technology into their pipeline system in the pipelines that are located in HCAs.

At this time, INGAA has not conducted a study of the deliverability impacts which reflect the feasibility of utilizing this option, but the installation of valves on in-service pipelines, either for addition or the replacement of legacy valves that cannot accommodate the newer operator technology will cause significant temporary impacts on the deliverability of natural gas. Inherently, the location of higher density population next to the pipeline is coincidental with the final delivery of natural gas to customers, limiting alternate delivery options. In addition, depending on the timing of the replacement of this equipment, there could be material shortages.

Finally, INGAA believes that rapid recognition and response are the essential elements, with automation being supportive of effective response. Our approach is to be able to have our

personnel coordinate with first responders and isolate failures to the extent that our employees are located near facilities in populated areas and can promptly respond. In those instances where we cannot, automation is the best solution.

3. Approximately what percentage of pipeline accidents are caused by excavators that are exempt from Call Before You Dig programs?

Response: We cannot provide a definitive answer, as data have not been collected historically by PHMSA in a manner to enable that.

PHMSA began to collect the information on the natural gas transmission pipeline incident reporting forms on whether the One Call system was notified, beginning in 2010. Before that, the information was not captured. Since 2010, there have been six onshore natural gas transmission pipeline incidents in four states that have resulted in ten fatalities and sixty one injuries. Two of these three fatal incidents were caused by excavation damage. In two of these incidents the excavator had phoned the One Call system and one did not (single death). The forms do not indicate if this particular excavator had an exemption. Of the four states where these accidents occurred -- California, Oklahoma, North Dakota and Texas-- all allow some sort of exemptions for reporting excavations to the One Call system

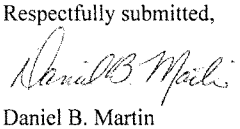
A voluntary reporting system (which records gas transmission and distribution pipeline excavation damage cases), operated by the Common Ground Alliance (CGA) has widespread participation from pipeline companies. Data from the CGA for 2009 (last year for completed analysis), show that 60% of the damages caused by "exempt" excavators involved a failure to call prior to striking the pipe, whereas 50% of the damages caused by "non-exempt" excavators involved failure to call before striking the pipe. While neither of these are positive, it does indicate that there is a bias in excavators that are exempt.

4. Why does INGAA support the one-hour incident notification section of the Discussion Draft?

Response: INGAA members support prompt notification, i.e., within an hour. We believe this is important in being able to work with first responders and our regulators to preserve lives and property. It is important to understand that in our efforts to quickly inform, our information may not be complete. The challenge our members face is that reports cannot be readily revised and, hence, there is a disincentive to report until we have reliable and complete information. We need a way to be able to revise a report.

We appreciate the opportunity to testify on the important issue of pipeline safety. If you need more information please feel free to contact me or the Interstate Natural Gas Association of America.

Respectfully submitted,



Daniel B. Martin
Sr. Vice President, Pipeline Safety
El Paso Pipeline Group

American Gas Association

September 21, 2011

The Honorable Ed Whitfield
Chairman Subcommittee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: American Gas Association response to letter, Whitfield to Dippo, dated September 7, 2011

Dear Congressman Whitfield:

Mr. Charles F. Dippo testified on behalf of the American Gas Association (AGA) on July 15, 2011 at the hearing titled: The American Energy initiative." AGA is pleased to respond to the Honorable Fred Upton's questions provided to Mr. Dippo in a letter dated September 7, 2011.

The Honorable Fred Upton:
Question 1: You voice concerns over the incident notification language of the Discussion Draft, but also state "the DOT Secretary has the technical expertise to promulgate the appropriate regulation on this issue that will balance the needs of all parties and to implement technically based notification requirement." Does this mean many of the concerns you have can be adequately addressed through the rulemaking process?

Yes, AGA believes that many of the concerns that Mr. Dippo expressed regarding the draft incident notification language in section 11 can be addressed through the rule making process.

Mr. Dippo, on behalf of AGA, stated in written and oral testimony before the House Subcommittee on Energy and Power that AGA members are concerned that legislation requiring pipeline operators to make telephonic reports to the National Response Center (NRC) no later than one hour after discovery will cause thousands of unnecessary reports to be submitted. This will overburden emergency responders, regulators, and other parties that must respond to the NRC notifications. Operators must give priority to initiating local action, assessing the situation, contacting emergency responders, and begin making the situation safe. If a one hour maximum time limit is legislated, it will require operators to report minor events to the NRC before there is time to assess if an event meets the reporting threshold in 49 CFR 191.5.

The draft bill requires that the Secretary prescribe standards for a notification regulation within two years after enactment. AGA believes, as it stated in its testimony, that PHMSA has the technical expertise to promulgate a regulation on incident notification through the notice and comment rulemaking process.

AGA is confident that DOT can use the rulemaking process to obtain input from all stakeholders involved in emergency notification and response to balance the need for prompt notification of the federal notification system with the need for operators to focus on understanding the initial facts surrounding incidents, immediately take local action, and avoid making unsubstantiated or unnecessary calls to the NRC.

400 North Capitol Street, NW, Washington, D.C. 20001 ▪ Telephone 202 824-7000, Fax 202 824-7115 ▪ www.aga.org

The Honorable Fred Upton:
Question 2: Can you describe for us some of the risks associated with cast iron pipelines? What about bare steel pipelines? Holistically, how do you evaluate the integrity of a line? What emphasis do you place on certain factors – material, age, pressure, etc. – over others? Does specifically focusing on cast iron pipelines mean an operator's resources could be diverted from other high-risk pipelines segments?

Cast Iron: "Cast iron pipelines have transported and will continue to transport gas safely for many years[1]." However, operators currently use more modern materials such as coated steel or polyethylene for new installations. AGA is an advocate of targeted, risk based replacement programs for cast iron pipe. Cast iron is only about 1.3% of the pipe in the United States. However, it will take considerable time to complete replacement because this represents over 35,000 miles of cast iron line. There are methods to safely manage cast iron systems during long-term replacement projects, and steps to minimize undue burdens on consumers from excavations, street closures and energy service cut-off.

Practices needed to safely manage cast iron systems include, (1) protecting cast iron pipe from damage that could result from disturbance, (2) operating cast iron systems at low pressure, (3) replacing pipe or adding protection to piping that has been disturbed, (4) conducting additional leakage surveys to monitor pipeline integrity, and (5) smart modernization of the cast iron system based on leak history and current pipe performance. Disturbance can occur from earth movement such as winter frost heave or flooding, and excavations or tunneling near the pipeline. Cast iron systems are operated at low pressure. Typical pressures are less than 2 psi, as compared to plastic pipe operating at 40-60 psi, and steel distribution mains at 40 to 150 psi.

Bare Steel: Bare steel pipelines were installed without a protective external coating. The external coating allows a corrosion protection system to be applied to the pipe, protecting the pipe from external corrosion and prolonging the useful life of the pipe. Even with no external coating, corrosion is a slow process and bare steel pipe can be safely operated for decades, especially in areas that are typically dry.

The primary risk for bare steel pipe is external corrosion. The pipeline safety code includes several procedures to ensure the integrity of bare steel pipe. These practices include (1) mandatory examination of the pipe if it is uncovered during excavation, (2) additional leakage surveys, (3) specialized assessments for bare steel under the Transmission Integrity Management Program, and (4) specialized corrosion evaluations. Operators have risk based programs to replace bare steel pipe, based on leak history and current pipe performance. The number of miles of bare steel pipelines continues to decrease.

It is important to take a holistic appropriate to pipelines safety. State public utility commissions have established a regulatory process where the operator evaluates the safety requirements of its entire system, submits rate cases requesting the resources to maintain a safe and reliable pipeline system, and then the operator adjusts its allocation to pipeline integrity based upon the resources available and real-time risk assessments of the safety requirements of its pipeline system. If operators are required to move away from this holistic approach and focus more resources on cast iron or bare steel pipelines, it can mean that an operator's resources will be diverted from high risk pipeline segments

The Honorable Fred Upton:
3. The Discussion Draft's Integrity Management section includes many factors for consideration in PHMSA's evaluation of how to expand integrity management while eliminating redundant class location requirements. What is AGA's perspective on the importance of these evaluation factors?

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[1] Gas Piping Technology Committee (GPTC) GUIDE FOR GAS TRANSMISSION AND DISTRIBUTION PIPING SYSTEMS: 2003 Edition.

The Natural Gas Transmission Pipeline Integrity Management Program (TIMP) is a very comprehensive and prescriptive regulation. When it was promulgated in 2003, it represented the most comprehensive addition to the federal pipeline code since the original code was adopted in 1971. Congress intended the TIMP regulation to address the potential for high consequence events in densely populated areas. AGA believes it would be inconsistent with the original intent of Congress to arbitrary expand the program without regard to population density and the magnitude of potential events. Therefore, AGA supports the inclusion in the Discussion Draft's Integrity Management section that the Secretary consider the continued priority to enhance protections for public safety, reducing risk in high consequence areas, the cost of expanding TIMP, and potential disruption of service.

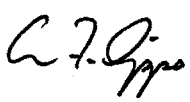
AGA believes that performance metrics from the first baseline assessments should be evaluated by PHMSA, industry, and the public to better understand the effectiveness of the existing TIMP regulation before decisions are made on expansion. AGA's written testimony suggested that Congress require PHMSA to create a data quality team similar to the Pipeline Technical Advisory Committee to evaluate this and other data that PHMSA collects.

Many well intentioned commentators on pipeline safety do not understand the complexity already built into the existing regulation. Many sparely populated areas are already included in integrity management, because the program includes parks and areas where people could congregate. Some pipelines in populated areas are excluded because the pipe diameter and pressure are so small that the potential for a high consequence event is extremely low. Before TIMP was developed, operators used categories for risk on class 1, 2, 3, or 4; with class 4 being the most densely populated area. The TIMP regulation created the new concept of a "potential impact radius" (PIR) that evaluated the potential for high consequence events on all class locations based upon the diameter and pressure of the pipe. The TIMP program should not be modified to give the same priority to a 30-inch pipeline operating at 900 psi that is given to a 6-inch pipeline operating at 100 psi.

All pipelines must comply with stringent state and federal safety standards even before the TIMP program is applied. As part of its regulation on TIMP, DOT has already included provisions for pipeline operators to have an added layer of protection on low-stress pipelines outside of HCAs. These provisions are known as Preventive and Mitigative (P&M) measures and are contained in Subpart O of the Federal Pipeline Safety Code. These P&M measures include enhanced protection against the threats of external and internal corrosion, as well as third party excavation damage.

We appreciated the opportunity to testify on the important issue of pipeline safety. If you need more information please feel free to contact me or the American Gas Association.

Respectfully submitted.



Charles F. Dippo.
Vice President, Engineering Services and System integrity
South Jersey Gas Company

Theresa M. Fariello
Vice President
Washington Office

October 3, 2011

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
2125 Rayburn House Office Building
Washington, D. C. 20515-6115

Dear Chairman Whitfield:

Below are ExxonMobil's responses to questions forwarded to Gary Pruessing, President of ExxonMobil Pipeline Company on September 7, 2011.

Questions from Representative Upton

1. **There has been some significant discrepancy reported in the media on the depth of the pipeline underneath the Yellowstone River. Can you report to us definitively how deep the Silvertip line was at the time of the rupture on July 2?**

The Yellowstone River crossing at Laurel is approximately 756 feet long. The depth of the pipeline as measured during the last survey in December 2010 is more than five feet below the riverbed and 12 feet below ground on the south river bank, in compliance with existing standards.

2. **Do you have any preliminary conclusions to share on the possible causes of the Yellowstone leak?**

ExxonMobil Pipeline Company ("EMPCo") has not reached any preliminary conclusions regarding the potential cause(s) of the incident. EMPCo's investigation is continuing.

3. **What was the basis behind your company's decision to re-start the line after severe flooding forced you to shut it down previously?**

In conjunction with a request by the City of Laurel, the line was shut down in late May as part of a risk assessment undertaken to evaluate risks associated with high water levels in the river. Technical analysis concluded that the line was safe to operate.

4. **You have committed to re-bury the Silvertip line 30 feet beneath the Yellowstone River. Was this possible when the line was initially installed?**

No. This crossing was installed in 1991 using a trenching method, and was fully compliant with existing standards. Most wide river crossings today are installed with the Horizontal Directional Drilling (HDD) technology. That technology became highly accurate, efficient, and widely employed in the mid 1990's, after this crossing was installed.

5. **Is it your company's practice to bury pipelines beneath waterways at the minimum required depth and no deeper than that?**

EMPCo is committed to conducting its business in a safe, reliable and environmentally responsible manner. This commitment requires compliance with all applicable laws and regulations, facilities that are designed and operated to high standards, and systematic identification and management of safety, health and environmental risks.

6. **You state your technicians shut down the nearest pump station within 7 minutes of discovering the leak. But the line continued to spill oil for another hour. Can you explain why it took this amount of time to isolate the incident?**

Our operators shut down the pipeline pumps within seven minutes after detecting a loss in pressure. However, shutting down an oil pipeline is not like shutting off a kitchen faucet – there are a series of valves that allow isolation of individual sections of the pipeline, which must be safely shut down.

The entire process took an additional 49 minutes after the pumps were shut off, and this figure is what had been formally communicated to regulators within the Department of Transportation (DOT).

7. **Could you describe the leak detection system you had in place that allowed you to begin shutting down the line within 7 minutes? Is this technology standard across the industry?**

We regularly patrol our pipeline routes on the ground and in the air and closely monitor our operations through a 24-hour control center. Sophisticated computers, alarms and other technologies are used to control and monitor pipeline systems and are designed to immediately implement protective measures should a leak be detected.

8. **Although your technicians were monitoring the situation very closely and acted extremely promptly, it still took an hour and a half to notify the National Response Center. Can you explain to us why it took this amount of time?**

To clarify the timeline of the incident, on July 1, at 10:40 p.m. Mountain Daylight Time (MDT) a pressure drop was detected at Silvertip pipeline. At 10:47 p.m. EMPCo shut down the pumps of the pipeline, stopping the flow of crude oil. At this stage, the source of the pressure drop was not known so the company began isolating various segments of the pipeline.

At 10:57 p.m., the Laurel block valve, located between the river and the refinery, was closed. The Laurel valve was reopened at 11:07 p.m. in order to allow the crude oil to drain down into the refinery. The valve was closed again at 11:28 p.m. to prevent any chance of a backflow of crude oil into the river and to prevent water from flowing into the pipeline.

At 11:36 p.m. the block valve located south of the Yellowstone River was closed. At 11:45 p.m. Laurel, Montana fire department alerted EMPCo's Operations Control Center in Houston of a petroleum odor in the area. At 12:19 a.m. EMPCo notified the National Response Center about the incident.

Questions from Representative Rush

1. How many contractors in ExxonMobil Pipeline Company are minority owned?
2. What is the breakdown of the number of minority owned contractors that are African American, Hispanic, and Asian-Pacific?
3. How many contractors in ExxonMobil Pipeline Company are women owned?
4. What is the percentage of minority owned contractors in ExxonMobil Pipeline Company?
5. Of the percentage of minority owned contractors, what is the breakdown of African American contractors, Hispanic contractors, and Asian-Pacific contractors?
6. What is the percentage of women owned contractors in ExxonMobil Pipeline Company?
7. Does ExxonMobil Pipeline Company have any programs aimed at recruiting or hiring minority contractors?
8. Does ExxonMobil Pipeline Company have any programs aimed at recruiting or hiring women contractors?

Answer:

Exxon Mobil Corporation has a Supplier Diversity Program that aims to expand access for minority- and women-owned suppliers to business opportunities with Exxon Mobil Corporation and its affiliates. ExxonMobil Pipeline Company participates in this program through the Corporation's procurement organization. Information on Minority- and Women-Owned Business Enterprises (MWBEs) that are suppliers to Exxon Mobil Corporation and its affiliates is maintained at the Corporation level and is summarized in the Corporation's 2010 Corporate Citizenship Report, a copy of which is enclosed. The Report includes information on the Corporation's efforts to recruit and contract with MWBEs. In 2010 Exxon Mobil Corporation and its affiliates had the following numbers of MWBEs in its Supplier Diversity Program:

Total Minority and Women-Owned Suppliers -- 1199
Hispanic Owned Suppliers -- 119
African American Owned Suppliers -- 45
Asian Indian Owned Suppliers -- 39
Asia Pacific Owned Suppliers -- 53
Native American Owned Suppliers -- 28
Other MBE Owned Suppliers -- 160
Women Owned Suppliers -- 755

Sincerely,

C: the Honorable Bobby Rush, Ranking Member, Subcommittee on Energy and Power

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